

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 ABRAXAS J. DISCALA, ALSO
 7 KNOWS AS AJ DISCALA, AND
 8 KYLEEN CANE,

Defendants.

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 10 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
 11 BEFORE THE HONORABLE ERIC N. VITALIANO
 12 UNITED STATES DISTRICT JUDGE
 13 BEFORE A JURY

12 APPEARANCES

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PROCEEDINGS

3658

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 The court is now in session. The Honorable Eric
4 Vitaliano presiding. The case on calendar is *U.S.A. versus*
5 *Discala and Cane*, Case Number 14-CR-399 on for jury trial.

6 Would the attorneys please note their appearances
7 beginning with the government.

8 MS. JONES: Shannon Jones, Mark Bini, Patrick Hein
9 for the United States, along with Henry Ishitani and FBI
10 Special Agent Elyse Morris.

11 THE COURT: Good morning.

12 MR. ROSS: Good morning, Judge, Charles Ross Matthew
13 Shroyer and Scott Schwartz for Mr. Discala.

14 THE COURT: Good morning.

15 MR. RIOPELLE: Good morning, Your Honor. Roland
16 Riopelle and Robert Caliendo for defendant Kyleen Cane.

17 THE COURT: Good morning.

18 Counsel for both sides are present, including
19 defendants.

20 Good morning, all. Any housekeeping?

21 MR. BINI: Your Honor, some quick housekeeping from
22 the government, if I could raise.

23 One thing in looking at the jury instructions last
24 night one last time, I noticed in 601 on page 89, the object
25 of Count Two indicated was wire fraud, and I believe it should

PROCEEDINGS

3659

1 say "mail fraud and wire fraud." So I wanted to raise that.

2 THE COURT: No one disagrees with that?

3 MR. ROSS: No disagreement.

4 THE COURT: I'll email that to Mr. Mejia.

5 MR. BINI: The second issue was, there was a request
6 from the media, and I've relayed this to counsel for
7 Mr. Discala, for several of the wiretap calls that were
8 admitted, three wiretap call excerpts, from 198-4, 198-21 and
9 198-28, specifically for the audio that was admitted into
10 evidence. And so I raise it for Your Honor. Our office take
11 no position, but we wanted to raise it so that the Court could
12 give permission or not give permission.

13 MR. ROSS: Judge, I'd certainly opposed that. The
14 media was here in court, they listened to the wiretap
15 conversations. They were --

16 THE COURT: You can save your breath, Mr. Ross.
17 Nothing's going out until this trial is over, until after the
18 jury verdict.

19 MR. ROSS: Thanks, Judge.

20 MR. BINI: Thanks, Judge.

21 THE COURT: Anything else?

22 MR. ROSS: No, Judge.

23 MR. BINI: No, Judge.

24 THE COURT: Mr. Ross, give us a report on
25 Mr. Bowman's wife.

PROCEEDINGS

3660

1 MR. ROSS: Mr. Bowman's wife is fine. She was in a
2 car accident, and apparently the injury was just an abrasion
3 burn from the seat belt.

4 THE COURT: And she was released?

5 MR. ROSS: Oh, yes.

6 THE COURT: Okay. Tell him we were asking for him
7 in case he doesn't get here.

8 MR. ROSS: I shall. Thank you, Judge.

9 THE COURT: Then we're ready for the jury.

10 Mr. Riopelle, I remember your last estimate that
11 your close was about two hours?

12 MR. RIOPELLE: I believe that's correct, Your Honor.
13 I have 71 slides, and I typically go at the 30, to 35 slides
14 pace.

15 MS. JONES: I assume, Your Honor, that we would take
16 our the morning break after Mr. --

17 THE COURT: Yes, the plan would be to make sure we
18 don't interrupt Mr. Riopelle, take a 15-minute break, and then
19 come back for your rebuttal.

20 Which you Ms. Jones, right?

21 MS. JONES: Yes.

22 MR. RIOPELLE: If Ms. Jones would like, I can
23 stretch it out a little bit, maybe she will get the whole
24 lunch hour.

25 THE COURT: I don't like that.

PROCEEDINGS

3661

1 (Jury enters the courtroom.)

2 THE COURT: Be seated, please.

3 Counsel will stipulate that the jury is present and
4 properly seated.

5 MS. JONES: Yes, Your Honor.

6 MR. ROSS: Agreed.

7 MR. RIOPELLE: So stipulated, Your Honor.

8 THE COURT: Ladies and gentlemen, welcome back.

9 It's a little hotter out there than I would prefer, but at
10 least it's dry and sunny.

11 Let me just briefly sketch out for you what our plan
12 is for today. We will hear the closing arguments on behalf of
13 Ms. Cane. They will be followed by the rebuttal arguments on
14 behalf of the government.

15 We will be sneaking lunch in. As I told you, we
16 purchased lunch for you, so you definitely are going to get
17 that.

18 There will be final instructions that the Court will
19 the give you on the law, and then hopefully we'll be able to
20 begin deliberations.

21 There are no time limits on deliberations. The jury
22 is encouraged to take as much time as they need to deliberate
23 and ponder the issues that have been presented to them. We
24 probably won't work past 6:30. If deliberations are
25 continuing beyond that, we will return tomorrow and begin anew

SUMMATION - MR. RIOPELLE

3662

1 and continue thereafter from day to day as need be. But
2 that's generally the plan to give you that plan as we begin.

3 So we're going to -- I said we would start. We do
4 have closing argument on behalf of Ms. Cane being offered by
5 Mr. Roland Riopelle.

6 Mr. Riopelle.

7 MR. RIOPELLE: Thank you, Your Honor.

8 May it please the Court, my colleagues.

9 Good morning, ladies and gentlemen. I'd like to
10 begin, before I launch into my slides, picking up on the
11 Judge's remarks a couple of days ago on Law Day.

12 He told you how important a day that is for all of
13 you in the legal profession. And it is an important day, and
14 he thanked you for your service, and my client and I thank you
15 for your service. And he likened you to those who as citizens
16 serve in our armed forces, and the duty that you've undertaken
17 is a very serious one like that.

18 But you know, that's always made me a little nervous
19 when a court or a litigant compares a jury to the armed
20 services, because I want you to keep in mind that you are like
21 soldiers. But you're not shoulders for me, and you're not
22 soldiers for the government, you're not ultimately soldiers
23 for the court, you are soldiers for the community.

24 It is your duty to take the law as the judge gives
25 it to you and decide the facts of this case as the diverse

SUMMATION - MR. RIOPELLE

3663

1 that you are. We trust in our community, which is diverse,
2 diversity will lead us to the best possible decision, and that
3 is a decision that will be only yours. Only yours. You're
4 not here to fight for the government. You're not here to
5 fight for Ms. Cane. You're here to render a decision of the
6 community.

7 And there's one other thing I want to pick up on,
8 it's a little more personal. Law Day for me this year was a
9 sad day. Because on Law Day last year, Brooklyn lost its
10 greatest criminal defense lawyer, a man named Gus Newman, who
11 I knew well, and who practiced the law until he was nearly 90
12 when he died. He died at 90. Tried his last case at 86 to an
13 acquittal, and had many notorious cases, some of them right
14 here in this courthouse.

15 He represented Floyd Flake. That's a name you may
16 know. Got an acquittal for Reverend Flake. And Gus was a
17 mentor of mine, and I loved him. Everybody who knew him loved
18 him. And so for me Law Day is little bit sad, and but it
19 helps me remember Gus.

20 And I you'll hope you forgiven me if I tell a few of
21 those old Brooklyn criminal defense lawyer stories that I
22 learned from Gus, when I was like Mr. Caliendo at the table
23 and watched Gus try cases.

24 They're stories that illustrate legal principles.
25 They're fun. And, frankly, they're a crutch, I know now, at

SUMMATION - MR. RIOPELLE

3664

1 almost 60, for a failing memory. So I hope you forgive me if
2 I tell a few of those and try to entertain you a bit as we go
3 through that process.

4 Now, I'd like to begin with some of the bedrock
5 principles that the judge will tell you about that apply in
6 trials like this.

7 The first, and you've heard this many times from the
8 judge, I just want to remind you, is that the burden of proof
9 throughout this case remains on the government. At all times
10 it is on the government, as I speak to you now, and it is the
11 government's burden to prove each defendants guilt beyond a
12 reasonable doubt.

13 That the burden never shifts to the defendant. The
14 defendant in a criminal case is never required to prove
15 anything, is never required to provide any evidence.

16 Now, of course, in this case we did cross-examine
17 witnesses. We did bring out facts that I think are important
18 for you to know. And we did call four witnesses, four brief
19 witnesses at the end of the case, so we did bring out some
20 facts, but at no point never do we have any burden.

21 The law presumes each defendant in this case to be
22 innocent. That presumption attaches to Ms. Cane now. It will
23 stay with her as you go in to the jury room to deliberate on
24 her fate. That presumption stays with her unless and until
25 you decide the government has proved its case beyond a

1 reasonable doubt.

2 And beyond a reasonable doubt, that is the highest
3 burden of proof imposed by the law. It is not probably. It
4 is not I'm pretty sure. It is not clear and convincing
5 evidence, which is a burden of proof less than reasonable
6 doubt. It is proof of such character that a reasonable person
7 would rely on it to make a decision in their lives. And we'll
8 talk a little bit more in detail about that a little bit
9 later.

10 And finally, and this is a really important
11 principle in any multi-defendant case. Each defendant's guilt
12 is individual and personal. You've got to decide Ms. Cane's
13 case based on only the evidence that applies to her. It's as
14 if there are two trials going on in this courtroom at one
15 time; one relating to Mr. Discala, one relating to Ms. Cane,
16 and you must consider the defendants individually. And this
17 is one of the most ancient principles in our law. It comes to
18 us, like so much, from the bible.

19 In the Book of Exodus, you will remember that back
20 in the days when there were real lawyers, Father Abraham got
21 into an argument with God about the city of Sodom.

22 God wanted to wipe the city of Sodom out because
23 there were a lot of bad people there. But Abraham argued to
24 God: You can't wipe out the whole city of Sodom, there are
25 some good people there. What if there are 50 good people?

SUMMATION - MR. RIOPELLE

3666

1 What if there are 20 good people? What if there are ten good
2 people, God? You can't wipe out the whole city.

3 Guilt is individual and personal. And that
4 principle comes down to us these thousands of years later from
5 that part of the bible. This is all important in the charge.
6 You will hear it later.

7 Here is another one. The fact that one side calls
8 one or more witnesses and puts in more evidence than the other
9 does not mean that you should find that the facts in favor of
10 deciding who called more witnesses, or who put in more
11 documents, is a winner. It's not like bridge, length over
12 strength, okay? It's not -- you know, the government put in
13 piles of documents. The government called most of the
14 witnesses. Of course, much of their testimony was
15 cross-examination. So that goes on our ledger.

16 But we will show you today, and we've tried to show
17 you during the trial, the ways in which the government's own
18 documentation favor my client; favor my client and show that
19 she didn't have the intent to commit any crime.

20 And remember, my client had no burden to present any
21 evidence. Indeed, one of the most famous trials of all time,
22 conducted by the greatest trial lawyer of the 18th Century,
23 Lord Erskine, in London, involved about 50 witnesses,
24 eyewitness who all saw the defendant commit the crime.

25 Lord Erskine didn't cross-examine any of them.

SUMMATION - MR. RIOPELLE

3667

1 Lord Erskine put on no evidence on behalf of the defendant.
2 But by gosh he stood up and gave a humdinger of a closing
3 statement and established a principle of law that got his
4 client acquitted. So keep that in mind. A person who puts in
5 the most evidence isn't necessarily satisfying any burden.

6 The verdict that you return must be based solely on
7 the evidence or the lack of evidence. You've got to look to
8 the lack of evidence as well as the evidence in the case.

9 Here's a very important one. Lawyer's arguments are
10 not evidence. My argument to you now is not evidence. I will
11 try to point you to what I think is the relevant evidence in
12 the case. I will try to raise the profile of the evidence I
13 want you to consider in that jury room. But whatever I say to
14 you now, just like whatever Mr. Hein said to you yesterday,
15 whatever Ms. Jones may say when I sit down, that is not
16 evidence. The evidence is what you heard from the witness
17 stand, and what you will see in the documentary evidence in
18 the case.

19 So don't be misled. Don't be misled by clever
20 arguments by me, Mr. Hein or Ms. Jones or anybody. You, if
21 you have a question about the evidence, if you have a question
22 about a particular exhibit, you can ask us to find the
23 relevant testimony in the record for you, if you need it, and
24 you can ask us to try to help you find the relevant documents
25 that you need. Don't be afraid to ask for our help as you

1 deliberate.

2 Now, a really important fact about this case that I
3 want you to keep in mind is that Kyleen Cane, Kyleen, my
4 client, is not charged with most of the conduct in the case.
5 The indictment charges four separate schemes. Schemes in
6 CodeSmart. Schemes in StarStream. Schemes in Staffing Group
7 and Cubed.

8 She is charged only with participating in the
9 alleged fraud in Cubed. And she is alleged to have entered
10 that scheme when it was already started. She came along
11 halfway through it. The government's charge is that she
12 joined it after it began.

13 Keep this in mind. Most of Kyleen's work in
14 connection with Cubed was the work of a lawyer, ordinary work
15 that lawyers do creating the forms that were filed with the
16 SEC, disclosing the purchases of Northwest Resources and other
17 transactions such as Ping Mobile, WikiTechnologies. Those
18 kinds of deals. That's most of what she did.

19 Keep in mind that a great deal of what she's charged
20 with here she was doing simply as a lawyer. She was not
21 involved in other conduct described by the witnesses.

22 Cane had nothing to do with Location Based
23 Technologies. She had nothing to do with Soul and Vibe. She
24 had nothing to do with some of these other illegal
25 transactions that are described by the government's witnesses.

SUMMATION - MR. RIOPELLE

3669

1 She had nothing to do with the creation of Northwest
2 Resources, about which we heard a great deal during the trial.

3 The three witnesses that the government called about
4 Northwest Resources, you'll remember them, Taylor Edgerton,
5 Wesley Smith and Marche Godffrey, never dealt with Kyleen
6 Cane. They never spoke to her. They never told you they even
7 knew who she was. Indeed, much of that conduct went in Reno
8 when Kyleen Cane was down in Las Vegas. It's about the same
9 distance as North Carolina from here. So there's -- and there
10 is no evidence, no testimony that Joe Laxague told Kyleen Cane
11 what was going on when he created Northwest Resources. Keep
12 that in mind, please.

13 So why did we hear all about that stuff? Why sit
14 through hours of testimony about things that had nothing to do
15 with Kyleen, and that's particularly true of the formation of
16 Northwest Resources. Because there was so little evidence, so
17 little evidence of Kyleen Cane's involvement in Cubed.

18 This is what happens when there's no evidence really
19 of wrongdoing. We start to go out and look at all kinds of
20 things like, well, the creation of Northwest Resources by Joe
21 Laxague in 2011, when the conspiracy in this case charges
22 conduct in 2014. What are we doing talking about something
23 three years earlier? Got nothing to say about 2014.

24 Here is some of the documentary evidence presented
25 by the government. It's just Kyleen doing ordinary lawyer

SUMMATION - MR. RIOPELLE

3670

1 stuff; emails, transmitting documents, filings with the SEC,
2 some of which are quoted by the government in the indictment,
3 which the judge will read to you, because the government
4 apparently wants you to rely on it.

5 That's the stuff that Kyleen was really doing. The
6 documents really don't prove anything about Kyleen's intent,
7 because what they show is that she was acting as a lawyer.

8 And, you know, we had the experience this morning
9 here in this courtroom that I think will show you that the
10 documents don't confirm or don't corroborate any of the
11 testimony from the government's witnesses.

12 Now, I'm here to tell you, that just this morning,
13 Kim Kardashian appeared here in court in a string bikini, and
14 she sat right here in seat number two. And it was very
15 exciting, at least for me, and I can prove it. You're looking
16 at me like you don't believe me. I can prove it. There's the
17 seat right there that she sat in. That's the proof.

18 Well, that's what the government is trying to do
19 with all these ordinary documents that a lawyer creates.
20 There's the documents. She was involved. The documents don't
21 prove Kyleen's guilt any more than the seat that Juror
22 Number 2 is sitting in to prove that Kim Kardashian was down
23 here in a string bikini this morning, unfortunately.

24 You need to consider all of the facts and
25 circumstances in deciding what happened in this case, deciding

SUMMATION - MR. RIOPELLE

3671

1 what Kyleen Cane's intent truly was. Don't hesitate to look
2 at all the facts. It's not always easy to figure out what
3 somebody intended when they filled out a form that any lawyer
4 would fill out.

5 Now, the indictment, as I told you in my opening
6 statement, has three key allegations as to Kyleen.

7 First, that her law firm was involved as the
8 attorneys for Cubed in an asset sale, for example, by which
9 Cubed became a public company.

10 But keep in mind about that. The proof, now
11 admitted, shows how Kyleen's work on behalf of Cubed was done
12 out in the open. It's not as though she was acting like some
13 kind of secret agent. Her firm filed these documents with the
14 SEC where anybody could get them. Remember we heard that from
15 several witnesses, when you file something with the SEC,
16 anybody with internet access can get to the documents.

17 And, in fact, you know, for example, they filed a
18 document disclosing how Cubed had purchased Northwest
19 Resources. How it was changing its name. All these things
20 were done out in the open by Kyleen and her firm.

21 And as you heard, the documents to show that at a
22 key point in time, the spring of 2014, the company had only
23 \$1500 on hand. The company had accrued professional fees by
24 that point of already \$130,000. The company was operating at
25 a loss.

1 So these are documents that are filed in public.
2 These are documents filed by Kyleen's firm. They're not
3 hiding it. And here's the allegation right in the indictment,
4 which the judge will read to you later, all out in the open.
5 Ask yourself as you think about the evidence, is that how
6 people conduct a fraud when indicted?

7 Here's an example of one of the filings. The
8 evidence doesn't show Kyleen committed a fraud. I submit to
9 you, it shows just the opposite. She's right out front in
10 this transaction, like anybody is here. In fact, what the
11 evidence shows is that she's acting as a responsible and an
12 effective lawyer.

13 Think about the testimony of Marc Wexler. He
14 thanked her for her hard work as a lawyer on Cubed. This is
15 to remind you that he thanked her for her hustle in buttoning
16 up the work in getting the filing done for Cubed. He
17 answered: Yes. And that's the filing that he was
18 complimenting her on in the background.

19 The evidence also shows, however, that Kyleen did
20 not do whatever Wexler wanted in connection with his fraud.
21 Remember this testimony that Mr. Wexler had conversations with
22 Mr. Discala about moving the account of Glendale away from
23 Glendale and to BMAC. Because they were unhappy. Wexler was
24 unhappy with the things -- the way things were going at
25 Glendale. Kyleen wasn't doing what he wanted. For the most

1 part, she wasn't doing what he wanted.

2 Ask yourselves as you think about this case, is that
3 a conspiracy? Is that a conspiracy when Kyleen was not doing
4 what Mr. Wexler wanted?

5 Now, here's the second allegation as to Kyleen.
6 That the defendants pumped the stock of Cubed up through match
7 and wash trades. Here's the allegation in paragraph 36 of the
8 indictment.

9 The defendants, together with others, manipulated
10 the vast majority of the trading activity, inter alia, wash
11 trades and match trades. But the government's own evidence,
12 the evidence they put on, shows that that didn't happen.
13 Let's look at it now.

14 Here's one of the tapes, I think it was played
15 yesterday, when Mr. Discala tells Kyleen: 541. Have the
16 broker at Glendale put in a bid at 541. 541 is fine. Kyleen
17 says: All right. I'll ask him to move it up a little.

18 But if you look at Government's Exhibit 196-13, and
19 this is a chart that was prepared by the government's own
20 expert, Deborah Oremland, what you see here, and if you look
21 at that day, the day of that phone call, is that, in fact,
22 there is no wash trade. Because remember the way to read this
23 chart is that buys go up and sales go down.

24 So if you look at this chart, there's no buys to
25 support the sales, there's no buys that match up with the

SUMMATION - MR. RIOPELLE

3674

1 sales that Kyleen and Glendale is making out of its account
2 that day. In fact, the alleged co-conspirators, people like
3 Wexler, Bell, and Azrak they're selling, too, that day. So
4 there are no matched orders. There are no wash trades that
5 day in that conversation. And the government's own evidence,
6 their expert's chart proves that it is so. Everyone is
7 selling. So there can't be any wash trade for a matched
8 order.

9 Here's another one Discala says: Let's leave it at
10 635. This is on May 23rd, 2014. You'll recall there was
11 testimony about how the defendants allegedly lost control of
12 the price of Cubed stock that day and it shot up for reasons
13 unattributed to them, and they had to do something about it.

14 So according to the tape recording, which I think we
15 heard, Mr. Discala said: Let's just leave it at 635. Cane
16 asks at one point: Where do you want it to land?

17 And you'll remember there is some confusion in these
18 calls, Ms. Cane, Kyleen, doesn't really understand exactly
19 what's going on, but she asks Mr. Discala: Where do you want
20 it to land? \$6.35.

21 But let's take a look at this. This is an excerpt
22 from Government's Exhibit 149-4. These are the confirmations,
23 the trade confirmations for every trade in the Glendale
24 account. And this is the confirmation for that day, May 23rd,
25 2014. The price at which Glendale trades is not 635. It's a

SUMMATION - MR. RIOPELLE

3675

1 nickel less, \$6.30. Well, the government wants to go on about
2 how, you know, well, that's pretty close. It's pretty close.

3 But it's not 635. It is the government's theory
4 that Mr. Discala and Ms. Cane could control the price by
5 arranging a trade at any price they wanted. If Discala said
6 635, they could trade at 635. Well, that didn't happen.

7 True, it's close. And you know what? Close is good
8 for horseshoes. You get a point in horseshoes for being
9 close. And close is good for kissing. But close is not proof
10 beyond a reasonable doubt of controlling the price of the
11 stock. Close is not enough to prove that Ms. Cane and
12 Mr. Discala could dictate the price of this stock. So you go
13 for close in horseshoes. Go for close in kissing. But don't
14 go for close in a courtroom where the government is held to
15 the highest burden of proof in the law, proof beyond a
16 reasonable doubt. Close is not good enough.

17 So the government's own proof, ladies and gentlemen,
18 it demonstrates that Kyleen was not a part of any conspiracy
19 to control the price of Cubed. Indeed, she could not control
20 the price of Cubed and the government's own proof,
21 Government's 149-4, that exhibit, proves that fact.

22 It did not make the price land at \$6.35, as Mr. Cane
23 wanted, she could not make the price land at \$6.35, because
24 she could not control the price. She was just kind of yes'ing
25 Mr. Discala in that conversation. And you've heard enough of

SUMMATION - MR. RIOPELLE

3676

1 these conversations to know that Mr. Discala could be pretty
2 insistent, he could be pretty persistent, he could be pretty
3 on her about things, and sometimes she just had to kind of yes
4 him to get him off the phone.

5 Again, let's look at this chart, 196-13. Matched
6 orders and wash trades. Remember, that's the government's
7 theory here. Look at the days that are in these boxes. Those
8 are days where virtually every trade is a sale. There are no
9 wash trades. No matched orders for these days, primarily, or
10 principally.

11 So if that's the government's theory, that
12 Mr. Discala and Ms. Cane were matching up orders, it doesn't
13 pan out. Look at the government's own proof. If you look at
14 that last box in June, there's only one day in the last three
15 weeks in June right there where there's actually some buying
16 on the side of the transaction in the stock by Ms. Cane and
17 her alleged co-conspirators. Every other day is a day when
18 everyone is selling.

19 And as Ms. Oremland told from you from that witness
20 stand, those are days when it's just impossible for there to
21 have been matched orders or washed sales that controlled the
22 price of the stock. So you know that it didn't happen the way
23 the government claims.

24 And I want you to remember a very crucial part of
25 Ms. Oremland's testimony. She's the government's expert

SUMMATION - MR. RIOPELLE

3677

1 witness, the woman from FINRA, that agency or that -- the
2 self-regulatory agency, I should say, down in Washington that
3 regulates broker-dealers.

4 She tried to analyze every trade, every trade in
5 Cubed. And you know what she found? She found that after
6 June 30th, there wasn't a single sale out of the Glendale
7 account. There wasn't a single purchase in the Glendale
8 account for a good three weeks or so before the arrest went
9 down, the Glendale account was entirely dormant. That's the
10 account the government associates with my client.

11 If there was no trading in the Glendale account for
12 three weeks before the arrest happened, there could not
13 possibly have been any market manipulation during those weeks.
14 There wasn't a buy. There wasn't a sell. There was nothing.
15 Nothing attributable to Ms. Cane.

16 And so when the government alleges that she and
17 Mr. Discala controlled the market with washed sales and
18 matched orders, it breaks down after June 30th. There's just
19 no way that this theory makes any sense, even during the
20 period Glendale was, in fact, trading.

21 Here's one of the phone calls again. Mr. Discala --
22 and I think, again, you heard this one yesterday. Mr. Discala
23 says: We looked into Glen for 5,000 just now and they didn't
24 budge. If they move a penny, I'm happy. You cannot budge.

25 Now that language, what does that mean?

SUMMATION - MR. RIOPELLE

3678

1 Mr. Discala, I think the government's theory is, is telling
2 Ms. Cane that he and his co-conspirators, according to the
3 government, of course, the people like Wexler and Azrak and
4 that bunch, they went and bought 5,000 shares from Glendale,
5 and Glendale didn't move its price at all. And that,
6 according to the government, that sounds suspicious.

7 Okay. Let's look at that day. Because we've got
8 the government's chart. We've got the government's chart.
9 Does it show, take a good look at it, does it show that any of
10 the co-conspirators, the people in blue, bought 5,000 shares
11 from anybody? From anybody? Let alone, the Glendale account?
12 It does not. It does not.

13 That's the government's proof. That's their expert
14 witness who analyzed every trade ticket. It shows you that
15 Mr. Discala is just kind of BS'ing. They didn't buy 5,000
16 shares from Glendale. They didn't buy 5,000 shares from
17 anybody. He is just blowing smoke at Kyleen.

18 And there were no discussions at any time on any
19 government wiretap of actual wash trades. This is another
20 one. You heard something like Discala said: Can you do me a
21 favor? Can you just make a quick call and go to 542, cause
22 Chardan is getting mad, it's just sitting there. Kyleen says:
23 Wait, who? What? Half the time she doesn't even understand
24 what Discala is saying to her and he needs to explain.

25 He says: Just go to 542. Have George go to 542,

SUMMATION - MR. RIOPELLE

3679

1 not 540. Oh, 542. She's kind of overwhelmed there.

2 What you don't hear there, what Mr. Discala is
3 asking her to do is: Call George. Get George move his bid up
4 to 542. Can you do that for me? It will look better if it's
5 at 542. Move your bid up.

6 What you don't hear, what you don't hear is
7 Mr. Discala saying: I'm matching your orders with another
8 broker. We need to do a trade at 542 with another broker to
9 set the price, to control the price of Cubed. You don't hear
10 an explanation like that from Mr. Discala. All he asks my
11 client to do is to keep in touch, get the broker, George
12 Castillo, at Glendale, and move the bid a little bit. That's
13 all he asks her to do.

14 So there's no evidence, no evidence at all in a call
15 like this of my client, Kyleen Cane, being told that when the
16 bid moves, we're going to have another broker buy it and take
17 it and set the price for the stock in that way. There is no
18 evidence at all in these phone calls of my client being told
19 about a wash trade or a match trade, it's just not there.

20 Keep in mind that moving your bid, or moving your
21 ask, as a broker may do, is not illegal. There's nothing
22 wrong with that. Every day brokers move their bids and asks
23 all over the place all the time for all kind of reasons. If
24 they do it for the purpose of executing a wash trade or a wash
25 order, that can be bad. But just moving your bid or your ask,

SUMMATION - MR. RIOPELLE

3680

1 it's a nothingburger. It's a nothingburger.

2 Okay. Here's the third allegation, the investor
3 escrow account. You heard a lot about that. That's the
4 account at Glendale Securities where the stock was held that
5 Ms. Cane was trading or that George Castillo was trading with
6 the knowledge of Ms. Cane.

7 The allegation in the indictment is that this escrow
8 account, the only one that actually traded any shares, was
9 used to control and manipulate the price and volume of Cubed
10 stock.

11 I want you to keep in mind, Glendale, that account,
12 managed by George Castillo, always sold shares, dribbled them
13 into the market a little at a time. It never bought shares.

14 And you heard a lot of testimony from the
15 government's witnesses, real market manipulators, people like
16 Wexler, people like Azrak, people like Bell, the real
17 criminals. You heard that you drive the price up by buying
18 shares in. That's one way to do it.

19 Glendale never did that. Glendale always sold. It
20 never bought. Glendale, again, did not sell for almost three
21 weeks the court case resulted; it didn't sell, it didn't buy,
22 it didn't do anything from June 30th until the time of
23 Ms. Cane's arrest on or about July 17th. For that period,
24 Glendale had no effect on the market. None whatsoever.
25 Didn't sell. Didn't buy. Whatever was happening in the

1 market had nothing to do with my client.

2 Glendale, for the most part, except for the first
3 few days, and we'll look at the chart in a moment, sold a few
4 shares into the market at a time at the prevailing market
5 price. It was the equivalent of a lock-up/leak-out agreement,
6 those types of agreements you heard, where people don't sell
7 too much stock at a time because they don't want to collapse
8 the price of the stock. That's what happened at Glendale.
9 The stock was leaked into the market. The proof shows, this
10 is the government's own proof, that Kyleen and Glendale did
11 nothing to control the price of Cubed.

12 What is it the one day, the one day during the
13 relevant period in this case when the price of stock
14 skyrocketed. The government's own proof shows you that it was
15 May 23rd, 2014. Well, what does the government concede about
16 that? Kyleen had nothing to do with that, right? That's the
17 one day the price shot up. The one day that the stock got
18 pumped was a day that Kyleen Cane and Mr. Discala had nothing
19 to do with the rise in the stock price. Indeed, you've heard
20 the phone calls where Kyleen is scratching her head and trying
21 to figure out what the heck happened? What do we do about
22 this? They had nothing to do with that jump in price.

23 And it didn't happen because my client did anything,
24 it happened for reasons we simply don't know. The government
25 never proved exactly why that stock went up, but it did. It

1 didn't have anything to do with Kyleen. And keep in mind,
2 that Glendale didn't sell any shares the last three weeks.

3 In fact, I submit to you that this spike in price
4 that my client had nothing to do with, proves, proves that she
5 had no ability to control the price of the stock. This is the
6 government's own proof. It shows that she didn't control the
7 stock, that it spiked on a day she had nothing to do with it.
8 She did not control the price of Cubed, and the government's
9 own proof demonstrates that.

10 And, in fact, ladies and gentlemen, the government's
11 proof shows that Kyleen was not even trying to pump up Cubed
12 stock in the way that Cubed was traded out of Glendale.

13 Remember, for the most part, the stock is leaked out
14 of Glendale a few hundred, a few thousand shares at a time
15 over the time that Glendale is trading. The first few days
16 there are large sales out of Glendale because there's real
17 market interest in this new stock. And after that, it kind of
18 bumps along and keeps leaking the stock out a little bit at a
19 time.

20 And we heard from Mr. Azrak about this kind of
21 trading pattern. I don't know if you remember it, I want you
22 to recall what he told you about that, and I want you to look
23 at this exhibit, Government's Exhibit 138-1. You'll recall
24 that Mr. Azrak told you that there came a point in time when a
25 large chunk of shares that he owned in a company called Excel

SUMMATION - MR. RIOPELLE

3683

1 Corporation became free trading. Free trading, with a hyphen
2 I guess. Became free trading.

3 So now he could trade them. Now he's got
4 two-and-a-half-million shares that he can sell, if he wants
5 do. And what does he do? If you look at this exhibit,
6 Government's 138-1, he sells a little bit at a time. He
7 doesn't sell every day. He sells a few thousand here, a few
8 thousand there. And this pattern goes on for several months.
9 He sells it off a little bit at a time. And here's what he
10 told us about that.

11 "QUESTION: You're selling them off a little at a
12 time, right?

13 "ANSWER: Correct.

14 "QUESTION: You did that because you knew if you
15 sold all 2,600,000 at once, the share price would go down to
16 nothing, right, or close to it?

17 "ANSWER: Yes, right. He didn't want to collapse
18 the price of stock.

19 "QUESTION: When you traded in this way, you weren't
20 intending to commit any kind of fraud; were you?

21 "ANSWER: No.

22 "QUESTION: And the government has never asked you
23 to plead guilty in connection with your trading in Excel; has
24 it?

25 "ANSWER: No.

SUMMATION - MR. RIOPELLE

3684

1 "QUESTION: There's nothing illegal in the way that
2 you traded your Excel shares; is there?

3 "ANSWER: Not that I know."

4 That's Mr. Azrak's testimony. He traded his shares
5 just the way that the shares were traded at Glendale. In
6 exactly the same way. Sold off a little bit at a time so that
7 the price of the stock was not crushed by too much selling all
8 at once.

9 And the government, which had Mr. Azrak in its
10 offices confessing to everything he could think of, and they
11 are looking to punish him for everything they could think of,
12 it never occurred to the government to charge Mr. Azrak with
13 that crime. It never occurred to the government that there
14 was something criminal in selling off a few shares at a time
15 so that you don't crush the price of the stock. That's --
16 that's a correct way to sell when you have a big wad like
17 that.

18 Again, look at the -- look at the chart, 196-13.
19 Except for the first few days, when there was a lot of market
20 interest in the stock, and, indeed, I want to direct your
21 attention to the very second day there. You see April 23rd,
22 you can see that there's a lot more selling out of Glendale
23 than there is buying by the alleged co-conspirators. So those
24 are not even really match wars. There's real in this stock in
25 the market. Glendale sells a few shares at a time. Not every

1 day. They don't sell every day. They're trying to keep the
2 price from collapsing. Because if they dumped all those
3 shares at once on the market, they would kill the price of the
4 stock. So they sell a little bit at a time; a few hundred, a
5 few thousands shares every time they sell and, again, they
6 don't sell every day. They sell them off just the way
7 Mr. Azrak sold off his shares in Excel. And there's nothing
8 illegal in that.

9 Let's consider Mr. Ferranti's analysis, because it
10 tells us something about the alleged conspiracy in Cubed and
11 whether my client's trading activity and the trading activity
12 at Glendale was a bad thing.

13 This is Mr. Wexler's trading accounts and the
14 profits he made when he got involved in the alleged conspiracy
15 to manipulate all these different stocks, a whole bunch of
16 stocks.

17 First there's CodeSmart. According to Mr.
18 Ferranti's analysis, Mr. Ferranti, you may recall, was the
19 financial analyst from the FBI. On CodeSmart alone, Wexler
20 made well over \$2 million in profits manipulating the trade.
21 On the Staffing Group, he made \$50,000. On StarStream, he
22 made almost \$300,000.

23 What happened with Cubed? He lost \$800. He lost
24 \$800. How did that happen? It was because when the
25 government shut down the trading in that company, there were

SUMMATION - MR. RIOPELLE

3686

1 still the many shares held in escrow that hadn't been sold,
2 because they were being sold into the market a little bit at a
3 time, a little bit at a time, a little bit at a time. And
4 when those shares went to zero, after the government shut down
5 the company, Mr. Wexler was left holding the bag. He was left
6 with those shares stuck, and he took a loss, like everybody
7 did on Cubed, after the company was shut down.

8 And that tells you something. It tells you that
9 Ms. Cane was not dumping those shares out in the market as
10 fast as she could to try to earn a quick buck, she was selling
11 them a little bit at a time, and as a result everybody got
12 left holding the bag when the government shut down the
13 company.

14 Mr. Ferranti's analysis demonstrates for you that
15 the Glendale escrow account was used to protect Cubed. It was
16 used to protect the company from predators, like Mr. Wexler,
17 who wanted to dump those shares all at once. He never got the
18 chance to dump his shares the way he liked to and, therefore,
19 he took a loss in that one, unlike the other transactions with
20 which my client has absolutely no connection, by the way.
21 When my client was around, Mr. Wexler could make a good buck.
22 When she was there, he lost \$800. Nor, nor did my client,
23 Kyleen Cane, pump the stock up through IR/PR. Remember you
24 heard a little bit about that, industrial relations, public
25 relations. You heard Mr. Wexler and others tell you that they

SUMMATION - MR. RIOPELLE

3687

1 really loved these press releases because that might cause the
2 stock to spike a little bit and they could trade on that and
3 make a profit.

4 But this is one of the government's exhibits, a text
5 message between -- a series of text messages between
6 Mr. Wexler and my client. Here we have one that says: No
7 release today, wow? He's upset because these press releases
8 are not coming out the way he liked, so he can trade on the
9 stock. He's upset that he's not getting the chance to trade
10 the way he'd like with big spikes in the price, according to
11 these press releases, and he tells my client: Well, I'll try
12 to manage this on my end. And this was a question about this.

13 "QUESTION: And this is one where you complained
14 that there was no news today, wow?

15 "ANSWER: Yes.

16 "QUESTION: And, in fact, you were hoping for news
17 on this particular day, May 20th, correct?

18 "ANSWER: Expecting.

19 "QUESTION: You were expecting news and it didn't
20 come out, right?

21 "ANSWER: Correct.

22 "QUESTION: And you were disappointed when she --
23 and that's a reference to my client, Ms. Cane -- and the group
24 she was working with -- that's a reference to the professional
25 IR/PR people -- did not do what you were expecting, correct?

SUMMATION - MR. RIOPELLE

3688

1 "ANSWER: Correct.

2 "QUESTION: Do you know as you sit here today,
3 Mr. Wexler, whether any shares were actually sold out of the
4 Glendale account on that day, May 20th, 2014?

5 "ANSWER: From me sitting here, no." He doesn't
6 remember.

7 But you know, you've got the evidence. You'll have
8 the evidence. Let's find out. Here it is, 196-13. Let's
9 take a look.

10 If you look, the dates below are the dates when
11 trades occurred. There were no trades in the Glendale account
12 between May 16th and May 21. So there was no manipulated
13 trading by my client, or George Castillo, or anyone else from
14 that account, the Glendale account, on May 20th, 2014, because
15 there was no trading at all. There was no attempt by my
16 client to trade through the Glendale account on the press
17 releases that Mr. Wexler was so anxious would come out. None
18 at all. And the government's own proof, Government
19 Exhibit 196-13, the government's own proof, demonstrates the
20 testimony.

21 Keep in mind, I have no burden. I have no burden to
22 prove any evidence. I have no burden to prove anything. I
23 could, if I was as good a lawyer as Lord Erskine, I could just
24 sit silent during the whole trial and give a great summation
25 and all that stuff. You probably know that's not my style,

1 but I could do that.

2 But the government's own evidence, even when I have
3 no burden at all, proves that Ms. Cane was not involved in
4 some scheme to manipulate this stock, Cubed, the only stock my
5 client's accused of, the news, the press releases the
6 government rely on, the government's own chart, their expert
7 prepared it, proves it.

8 And let's consider it. On May 21, 2014, the next
9 day, Discala says: Moves the price to 541. However, if you
10 look at this chart here, there's no matched trade that day.

11 So if Mr. Discala is asking my client to move her
12 bid or move the bid at Glendale up to 541, he's apparently not
13 doing it for any reason to create a matched order or a washed
14 trade to try to get the type of manipulative activity that is
15 charged in the indictment.

16 And keep in mind that is what is charged in the
17 indictment. And the government must be held to what is
18 charged in the indictment. They do not get to argue to you
19 now that there is some other theory that is not charged in the
20 indictment, and that's why my client is guilty.

21 We have a process, the grand jury has to return a
22 indictment that gives the defendant notice of what the charges
23 are. The charges here are matched trades and wash orders --
24 wash trades and matched orders. And there's no such thing on
25 May 21st. On that day, everybody's selling again. So

SUMMATION - MR. RIOPELLE

3690

1 Mr. Discala's request that my client move her bid up to 541 is
2 not part of any scheme to manipulate the market by wash trades
3 and matched orders. I'll get that right hopefully by the end.

4 So any change is not an attempt to influence the
5 market. It didn't happen. It just didn't happen the way the
6 government alleges, and the government's own evidence shows us
7 as much.

8 In fact, all the trades that day are sales. So they
9 couldn't push the market up. You heard that sales tend to
10 push the market down. This wasn't a pump, just selling off
11 the shares that in an orderly way so you don't crush the
12 market. It wasn't much of a pump-and-dump scheme at all. It
13 just wasn't. And the government's own proof -- the
14 government's own proof demonstrates it.

15 The contents that day show that shares were traded.
16 This is the Ben-Bassat account. There it is, May 23rd, 2014.
17 It shows shares were traded a little below 541, just didn't
18 get up to 541. So we know that there was no rigged trading at
19 541 that day. Again, close is good for kissing. You get a
20 point in horseshoes for close, but close is not proof beyond a
21 reasonable doubt. It just isn't.

22 Let's consider the evidence concerning these press
23 releases and the SEC filings. There is no evidence whatsoever
24 that any press release issued in connection with Cubed or any
25 SEC filing was false. You have not heard any witness come in

SUMMATION - MR. RIOPELLE

3691

1 here, the witness from Ramapo College, the witness from
2 Binghamton came in and said, you know, those press releases
3 about how to use CodeSmart those are not accurate. Nobody
4 said that about any Cubed press release.

5 There is no evidence whatsoever that any press
6 release issued in connection with Cubed was false. And the
7 SEC filings, which the government quotes, quotes in its
8 indictment, the SEC filing prepared by my client with the
9 assistance of an accounting firm that the government quotes in
10 its indictment are not alleged to be false. The government
11 relies on them. There's none. Nada. Zilch. No false in
12 connection with those items.

13 In fact, the only overt acts asserted against Kyleen
14 Cane in the indictment, and the judge will read them to you,
15 listen up when he reads, listen to the judge, it is very
16 important. The only overt acts asserted against Kyleen Cane
17 in the indictment are two phone calls between her and
18 Mr. Discala in which she reports that she is actually in the
19 process of getting a more professional IR/PR firm involved in
20 the Cubed deal. She is doing what a lawyer does to protect
21 her client. She is being professionally involved. And the
22 only phone calls charged against her as overt acts are her
23 doing her job as a lawyer to get good professionals involved.

24 And that's -- that's the best the government can do
25 in terms of overt acts against my client, even though they

SUMMATION - MR. RIOPELLE

3692

1 can't prove any press release is false. My client's charged
2 with just being a lawyer. Now I'm nervous.

3 Let's talk a little bit about the witnesses in this
4 case. First there are the cooperating witnesses and the
5 immunized witnesses. Those are the ones that have these
6 deals, and you've seen a lot of those deals. You'll get a
7 chance to examine them, a number of them they have been
8 admitted into evidence, and we can talk about it a little bit
9 in a minute.

10 I'm talking about the folks, Matthew Bell, Marc
11 Wexler, Victor Azrak and Jamie Sloan. Those are the
12 witnesses, the cooperating witness whose pled guilty and are
13 up there on the witness stand testifying hoping for a reduced
14 sentence.

15 You also heard from Taylor Edgerton and Marche
16 Godffrey. Those are the three witnesses, all of whom have
17 immunity deals, all of whom have been promised immunity in
18 exchange for their testimony. All of whom can never be
19 prosecuted for their activities in connection with the
20 Northwest Resources.

21 Those are the witnesses who testified about,
22 according to them, their wrongdoing in connection with the
23 formation of Northwest Resources in 2011, years before my
24 client got involved with Cubed. And they testified that they
25 dealt with Joe Laxague, not my client. Don't even know her.

SUMMATION - MR. RIOPELLE

3693

1 MR. RIOPELLE: These witnesses, I submit to you,
2 this bunch of folks are walking, talking, reasonable doubts.
3 They are untrustworthy. Every one of them. Every one I
4 believe has told you that when they were first interviewed,
5 according to them now, according to them now, they lied their
6 faces off. Right. Every one of them has told you that they
7 lied over and over and over again. They kept meeting with the
8 Government and eventually their story improved and eventually
9 the Government decided, okay, we'll buy that one. Here is
10 your deal, sign up, you don't get prosecuted. Take the
11 witness stand, figure everyone out.

12 Of course the problem with some of them is they
13 never met Kyleen Cane, never spoke to Kyleen Cane, didn't know
14 Kyleen Cane's name. But we can talk about nefarious deal now
15 that you're willing to tell us it was a nefarious deal.

16 Think about all the lies these people have told and
17 ask yourself, would you rely on them, these serial liars in
18 some important aspect of your life. If Mr. Wexler arrived and
19 said, I'd like to marry your daughter, that's an important
20 aspect of your life, would you be happy about that? I don't
21 think so.

22 How about if you had your rent money or your
23 mortgage money and you needed to go to a bank and get a money
24 order to pay your rent or mortgage, that's an important thing
25 in all our lives. Would you ask Victor Azrak to take that

1 money to the bank and get you that money order. No, I don't
2 think so. I don't think so.

3 If tomorrow you come to court, and we've all have
4 seen how seriously you take your jobs, if you were to come to
5 court tomorrow and you were walking into the courthouse and
6 Marc Wexler walked out and said, oh, don't worry there is no
7 court today. You don't have to do any deliberation, you just
8 turn around and go home. Would you rely on that? I think
9 you'd come and ask Mr. Villanueva, do we have court today or
10 not. If you would come ask Mr. Villanueva about that, you've
11 got a reasonable doubt about Marc Wexler. Think about that,
12 would you trust them in a important aspects of your life?
13 That's a reasonable doubt, something important to you, really
14 important to you.

15 Now here is one of the cooperation agreements, they
16 are more or less the same. It's a form agreement, the
17 language is the same in all of them, but I think it is worth
18 looking at some of these things so you know what you're
19 dealing with.

20 This the cooperation agreement that relates to Marc
21 Wexler. You'll recall he pled guilty to two different
22 charges, Count One and Count Three in an Indictment against
23 him charging him with a total maximum term of imprisonment of
24 25 years, 25 years. And then the really key language of this
25 Indictment appears here in paragraph 14 -- or at least the key

1 language to Mr. Wexler I should say -- if the Office
2 determines that the defendant has cooperated fully, provided
3 substantial assistance to law enforcement authorities, and
4 otherwise complied with the terms of this agreement, the
5 office will file a motion pursuant to 5K1.1 with the
6 sentencing court setting forth the nature and extent of his
7 corporation.

8 You heard from the witness stand how these witnesses
9 who have pled guilty, people like Marc Wexler, are counting on
10 getting that letter, that 5K letter. It will take away their
11 sentencing guidelines. It will give them a chance at a
12 probationary sentence where otherwise they would be going to
13 jail for sure. They want that letter like nothing else. They
14 need that letter more than they need anything. And they must
15 do whatever they need to do to get it.

16 And most of these agreements also include a criminal
17 forfeiture term. In this one for Marc Wexler, he agreed to
18 forfeit \$1,400,000, which sounds like a ton of money, until
19 you think about Mr. Ferrante which showed that he made about
20 two-and-a-half million dollars out of this scheme. So he
21 actually got a pretty good deal.

22 Here are some things to consider, every one of these
23 witnesses claims that he or she lied the first time they were
24 interviewed. So they are not afraid to lie when they think it
25 will help them, right. Think about that. They will lie when

SUMMATION - MR. RIOPELLE

3696

1 they think they will help themselves. Every one of them has
2 changed their story considerably, almost 180 degrees. In many
3 cases they said I don't know who Kyleen Cane is, or I thought
4 Cubed was a legitimate deal. The other ones were that Cubed
5 was real. Every one of these witnesses, every one of them,
6 changed their story after they began interviewing with the
7 Government, after they began interviewing with the Government.
8 Knowing because of all their wrongdoing they desperately
9 needed this 5K letter. They desperately needed a way to get
10 this agreement. They desperately needed to be able to testify
11 against someone else, climb out of their hole over someone
12 else's back. That's what they needed.

13 You know, Bismarck, the great German diplomat once
14 said, "Legislation is like sausage, you're betting sticking to
15 the end product and not knowing exactly how it's made.
16 "That's sort of true in these agreements too.

17 You heard how these people met with the Government
18 over and over and over. You got the questions they were asked
19 over and over and over. They were desperate for these
20 agreements and they changed their stories. Why? Why? Why
21 did they do that?

22 Mr. Azrak said it best, he was terrified, terrified
23 to go to jail. Terrified of incarceration. I want you to
24 consider this when you go back to that jury room, if there is
25 someone, anyone, who ought to be terrified to go to jail or

1 look for a deal to get out of jail and terror it would be my
2 client. But she didn't meet with the Government. She didn't
3 have anything to say about others. She didn't point the
4 finger because she was on the outside. She would be as
5 frightened as anybody, but she did not seek to cooperate
6 because she had nothing to say.

7 Let's look at the cooperation agreement, requires
8 substantial assistance. They have got to do something for the
9 Government to get their deal. It's the Government, by the
10 way, that decides whether they've told the truth and whether
11 they've provided substantial assistance. It's the Government
12 who decides that. Because if the Government decides that they
13 haven't told the truth, they get no deal. They get no letter.
14 Wexler goes to jail for 25 years. The Government makes that
15 decision.

16 And consider this, here is another point to think
17 about, none of those witnesses, not one of them, was ever
18 charged with a crime for lying to the Government in their
19 first interview. They all acknowledge that they knew that was
20 a crime, the Government never charged them for that. It gave
21 them a pass, at least for now, on that criminal activity.

22 But consider this, if you look at those deals
23 closely, all of these witnesses have gotten immunity for their
24 securities fraud. They have not gotten any immunity for the
25 lies they told in those first interviews. And that means,

1 that if they were to go back and stick to their first story, I
2 didn't know Kyleen Cane, I thought Cubed was legit, I thought
3 that was a real deal. That's the type of testimony Matt Bell
4 gave in his original interview with the FBI, it's in the
5 record, you can ask for it. If they go back and say, you know
6 having thought about it, Cubed is a real deal. They will be
7 charged first with their false statement in their first
8 interview because they've gotten no immunity for that. And
9 then charged with a new false statement for going back on what
10 came out of all their meetings with the Government. And then
11 their agreements will be torn up and they'll have to face
12 their 25 years or more in jail. So the fact that they never
13 got immunity for those false statements and the fact that they
14 haven't pled guilty to any of that is very important here.

15 There is some circumstantial evidence along the way.
16 You'll remember that Matt Bell promised to pay a forfeiture he
17 can't possibly afford. Wexler agreed to pay a million four in
18 forfeiture, but he made two-and-a-half million, he snookered
19 the Government. Azrak's father, Ruben, who was involved in
20 all this trading activity, he never got charged, they left him
21 alone.

22 Here is how the Government's cooperation agreement
23 really works. We heard it in Matthew Bell's testimony.
24 Question, if you tell a lie and the Government decides it's
25 the truth, you'll still get your 5K letter, right? Answer, I

1 don't know how that works. But I guess so.

2 If he lies but it's a lie that will fly, it's a lie
3 that the Government likes, he'll still get his 5K letter. He
4 knows that.

5 It's for you, ladies and gentlemen, to decide
6 whether this agreement that the Government will argue for you
7 is sort of a truth serum. They got the cooperation agreement
8 and they'd never dare lie to you. You'll decide whether it's
9 a truth serum for the Government witnesses who had a long
10 career of lies, or is it really a set of shackles that binds
11 these witnesses to a version of the story that the Government
12 wants to hear. You'll have to decide that.

13 Consider the testimony of Wexler and Sloan about the
14 bribe that Wexler paid Sloan. If you lie to the Government
15 and it's a lie that the Government likes, it's okay. Was it
16 10,000 or 15,000, the way Wexler remembers? Or was it 4,000
17 the way that Sloan remembers it? That's a big difference.
18 It's a big difference. You know what, there are a little
19 moments in every trial that kind of illustrate an important
20 fact about the case. And this is one. When Wexler is paying
21 a bribe he pays an enormous amount because that makes it
22 important, he's trying to impress the Government. He's paying
23 a big bribe \$10,000, could be \$15,000. He's trying to impress
24 what a big crime it was. He knows that will help him to get
25 Jamie Sloan in trouble, more trouble, by exaggerating the

SUMMATION - MR. RIOPELLE

3700

1 describe. When Jamie Sloan tells about the bribe, it's only
2 about 4,000, that's all it. She's minimizing her role.

3 So that tells you about these witnesses. They
4 exaggerate. They minimize. They don't tell the truth. Maybe
5 it was neither. Wexler exaggerates the conduct and Sloan
6 minimizes it.

7 And consider the lies told on the witness stand. A
8 couple of these witnesses who just sat up there and lied
9 directly to you as you sat here in court. Remember the
10 testimony of Matthew Bell, certain firms allow naked shorts
11 where you just short it without borrowing it. Question,
12 that's illegal, isn't it? No, not if the firm allows it.
13 Page 553 of the transcript.

14 The next witness, Ms. Oremland, the Government's
15 expert on securities trading. In your opinion as a securities
16 expert are naked shorts permitted by the Securities and
17 Exchange Commission. No.

18 So Bell just lied right to your face on that one.

19 And listen to the Court's charge on this point. If
20 any witness is shown to have willfully lied about any material
21 matter, you have the right to conclude that the witness also
22 lied about everything. You can either pick and choose out of
23 the witness's testimony what you like, throw the rest out, or
24 you can throw it all out.

25 You know, ladies and gentlemen, I had an experience

SUMMATION - MR. RIOPELLE

3701

1 just this morning that I think will guide you how to consider
2 this and these lying witness who's have long careers lying.

3 I woke up early this morning before it was light, as
4 I typically do. I went into my kitchen. I turn the light on.
5 I could barely see at that hour. Poured my Raisin Bran into
6 my bowl, got out my milk, poured the milk on the Raisin Bran.
7 Don't you know those raisins started to move. It wasn't at
8 all a raisin; it was a bug. Now, I could have just taken my
9 spoon and thrown the bug out and ate the cereal, but I didn't.
10 And I recommend to you that you do not accept any part of the
11 testimony of these witnesses who are demonstrated liars.

12 Consider the law enforcement witnesses,
13 Ms. Oremland, the FINRA career expert and chart maker. Whose
14 charts for all the Government's efforts don't show know wash
15 trades or market control, they just don't. We saw that
16 earlier.

17 Consider Joe Laxague and Christopher Ferrante, the
18 FBI financial analysis, proved that Wexler was the liar and
19 the thief, the \$2.5 million man. Even though he told you he
20 didn't make anything like that kind of money. They analyzed
21 their records. They knew what he made. He made
22 two-and-a-half million dollars. No, no, I didn't make. Oh,
23 common, common, he's a thief. Up there testifying like that,
24 it's insulting.

25 Or Constantine Voulgaris, he came at the very end of

SUMMATION - MR. RIOPELLE

3702

1 the case. That was the FBI agent who was the Government's
2 summary witness. You'll recall there was a great deal about
3 the case that he couldn't remember. He was a witness who was
4 an FBI agent who couldn't be bothered to follow up on
5 allegations of threats against his own witnesses. Remember
6 that? Remember that Marc Wexler testified that a man named
7 Hunter Adams threatened him and terrified him during the
8 transactions, the Cubed transaction. And Agent Voulgaris
9 apparently couldn't be bothered to follow up on that and
10 figure out about Hunter Adams. Ask yourself, is that the kind
11 of work we expect in a criminal case?

12 It was a low point when we got a little good,
13 old-fashion resume fraud from Agent Voulgaris. I don't know
14 if you remember that testimony. Question, now you do you
15 recall at the outset of your testimony you were asked about
16 your own employment in the financial industry. Yes. You told
17 the jury that in fact you worked in the financial industry for
18 about six years before becoming a Special Agent with the FBI.
19 Yes. And do you recall that you were asked where you worked
20 primarily? Primarily, yes. And you responded, if I
21 understood you correctly, that you worked primarily at BPP
22 Paribas and Merrill Lynch, correct. Yes, uh-huh.

23 Well, he made it sound like he was some big shot at
24 Merrill Lynch and BNP Paribas. By the way, what did you do at
25 BPP Paribas? I started working at a back office as a

SUMMATION - MR. RIOPELLE

3703

1 consultant through a, I guess, hiring staff agency. He was a
2 temp, yet he has the gall to sit up there on the witness stand
3 to talk you to you how he was a big shot in the securities
4 industry. Fair to say clerk-type work? Yes. There is no
5 shame in that. There is no shame in being a clerk, but there
6 is shame in sitting on the witness stand and testifying to you
7 that he worked at Merrill Lynch when in fact, he left the BNP
8 Paribas because he was laid off. He was at Merrill Lynch for
9 all of about three months before he was laid off there as
10 well. And he didn't even tell you about this business called
11 Annuity Funding, a payday-lender type of place that charges
12 high interest rates to clients who can't get bank loans. He
13 was there twice as long as he was at Merrill Lynch. He didn't
14 tell you about that.

15 Consider the witnesses the Government didn't call,
16 didn't offer these immunity agreements, didn't obtain
17 evidence, Hunter Adams. This guy who stuck up Marc Wexler,
18 threatened him, scared him. The Government didn't call him.
19 Didn't give him an agreement. Didn't even find out about that
20 threat. What kind of investigation is that?

21 George Castillo, you heard they interviewed him.
22 They talked to him. They spoke to him. They could offer him
23 one of these deals, come on in here and finger Kyleen Cane,
24 tell us all the bad stuff you know, you won't be prosecuted,
25 you'll get the immunity just like the rest of them. They

SUMMATION - MR. RIOPELLE

3704

1 didn't call him. You wonder if maybe he didn't have anything
2 bad to say.

3 Joe Laxague, the guy the Government claims was
4 involved in creating all the Northwest Resources, the problems
5 there. We had the three witnesses tell us that was a dirty
6 deal from the very beginning. They didn't charge Joe Laxague
7 and bring him in here as a cooperator. They didn't offer him
8 an immunity deal to tell us about that.

9 I think it's fair for to you conclude that he would
10 not have agreed with those witnesses who changed their story
11 and decided they better testify that Northwest Resources was
12 from the outset. They didn't call Joe Laxague. Think about
13 that.

14 How about Steve White or Joe White, the executives,
15 two of the guys who founded Cubed, or Doug Shinsato, or any of
16 the people who worked at the company. It was a real company.
17 Why didn't we hear about any of them? Why didn't they come
18 and testify? Because they would tell you that Kyleen Cane was
19 a good lawyer, they didn't know anything bad about her. Why
20 didn't the Government call them?

21 And there were so many unplayed tapes and unexamined
22 text messages. Now, look, I of all people feel we heard
23 plenty of evidence and saw plenty of evidence during this
24 case. But the truth is, that there were thousands of calls
25 and texts that were not played or admitted in evidence. And I

SUMMATION - MR. RIOPELLE

3705

1 submit to you that's because there are so many that are in
2 fact exculpatory. They don't show any kind of evil
3 wrongdoing. But if the Government has got evidence that
4 somehow will smear Kyleen or put up a stink in the courtroom,
5 they'll put it on.

6 That's the evidence that relates to the formation of
7 Northwest Resources, they had to call three witnesses about
8 that. None of them had ever heard of Kyleen. They didn't
9 know who she was. They dealt only with Joe Laxague.

10 We heard about later conversations that Kyleen had
11 with Joe Laxague about selling Northwest Resources in 2013,
12 two years after it was formed, and a year before the Cubed
13 transaction. That's really what this case is about, we had to
14 hear about that. But we didn't hear from Joe Laxague.

15 We heard how NPMC (sic) got restricted shares in
16 Cubed. We heard from an awful lot of victims. There were a
17 lot of people hurt by this, a lot of people. There is nobody
18 that disputes that people were hurt, and badly, by this.

19 The Government wanted to call armies of them because
20 they want to point to the harm that was done when Cubed was
21 shut down in the hope that you will make a decision about my
22 client's fate with your emotion rather than what are the
23 facts.

24 What are the facts? Northwest Resources, it sounded
25 terrible. All this stuff that went on 2011 in Reno, 450 miles

1 from my client's office. Sounded terrible. But my client
2 wasn't involved. None of this stuff, by the way, none of it,
3 has anything to do with wash trades or matched orders, which
4 is what is the allegation in the Indictment. And none of the
5 calls or texts with Kyleen Cane had to do with wash trades or
6 matched orders either. That's the allegation of market
7 manipulation in the Indictment.

8 The Government may well have convicted Joe Laxague,
9 ladies and gentlemen, maybe, but he's not on trial here. They
10 haven't convicted Kyleen Cane of any wrongdoing in connection
11 with Northwest Resources. She wasn't in Reno. These people
12 didn't know her. They never said she had anything to do with
13 that company. There is just no proof connecting her to what
14 those witnesses Taylor Edgerton, Wesley Smith, Marche Godffrey
15 now claim after two or three interviews was wrongdoing. She's
16 not connected to it in any way.

17 There is just no wrong against selling a shell
18 company. There is no evidence, none at all, that Kyleen Cane
19 was anything wrong with the way Joe Laxague created Northwest
20 Resources. There is no evidence of that.

21 There is no evidence that Kyleen Cane made any
22 improper trade either. Because talking about raising your bid
23 or lowering, your ask, is not matching orders. Right. Look
24 at all this these days when there is all sales in Cubed and no
25 corresponding buys. As we've said before, coming close to a

1 price is not control.

2 Let's take a look at this exhibit, Government's
3 Exhibit 196-12, another one of those charts prepared by their
4 expert Ms. Oremland. If you look at last few days of trading
5 in June, and indeed in the month of June in total there is no
6 way, there is just no way that the Glendale account, the
7 Ben-Bassat account, dictate the price of Cubed. Remember his
8 trading is shown by the green bars, right; the other trading
9 in the market is shown by the blue bars. So he is a small
10 part of the volume of the trades in Cubed during June. He
11 doesn't have the market power. He's not pushing the stock.
12 Indeed during the last three days, it's all blue. He's not
13 really any significant part of the market for those days.

14 So the Government's own proof shows that by June
15 David Ben-Bassat's account at Glendale was such a tiny part of
16 the trading volume it couldn't force the price, it couldn't
17 set the price, and it didn't set the price.

18 Here is the Government's argument you heard
19 yesterday, those Cubed shares in the Ben-Bassat account were
20 worth millions of dollars. If that was so, why didn't Kyleen
21 just dump them and run into the sunset with a quick fortune?
22 Because she was protecting the company. If she had dumped
23 those shares she would have destroyed the share value. She
24 was acting in the best interest of the company in the trading
25 activity, in the Glendale account, which simply leaked a few

SUMMATION - MR. RIOPELLE

3708

1 shares to the market and the market will allow it. The there
2 was no dump in this case.

3 Here is another one that we heard yesterday.
4 Occasionally you'll see a text message from my client saying
5 let's have a telephone call, let's not text. According to the
6 Government she was concealing things. Look, really this is
7 heads I win and tails you lose. They put on a bunch of my
8 client's texts claiming that she made important admissions in
9 these texts when talking to Wexler. But, boy, when she says
10 let's not text about this, give me a call, now she's hiding
11 the facts she's really being evil.

12 No, no, that's not what is happening. If there is
13 something complicated to talk about -- and I can say this as a
14 person of a certain age -- you're not used to typing with your
15 thumbs, you don't text about something that is complicated and
16 important, you have a phone call. Now look, I get excoriated
17 by my wife trying to call our children. She tells me that
18 children don't have telephone calls anymore, you must text,
19 stop being an old dinosaur, an idiot. The way I was raised
20 you call when you have something to say, you don't text it.

21 And that's all that is happening when she and
22 somebody else are talking about some important, market
23 activity, she says, call me don't text. Texting takes time,
24 it's easier to explain on the phone. That's all that is
25 happening.

1 You certainly did see plenty of texts. The
2 Government doesn't think she's refusing to text all together.
3 She simply wanted, Kyleen wanted to explain things in detail,
4 you can't do that in a text.

5 This is a situation where the Government, which has
6 spent so much time with people like Wexler and Azrak and Bell
7 and Sloan that anything looks guilty to them. Anything looks
8 guilty. They are convinced that the minute they hear
9 hoofbeats it's a zebra. We know it's a zebra because they've
10 sat with these people for so long and anything, anything at
11 all seems guilty to them. They've spent too much time with
12 people like that, Wexler and Bell, Azrak and Sloan, everything
13 looks dirty and wrong to them. Because with Wexler, Bell,
14 Azrak and Sloan, everything pretty much was. But that's not
15 true of everyone.

16 In 35 years of law practice, you'll recall there is
17 no evidence at all, at all, that my client, Kyleen Cane, was
18 ever disciplined, ever charged with anything. Indeed one
19 thing Agent Voulgaris did do was he went to the SEC and looked
20 everybody up, tried to figure out who had problems with the
21 SEC and what they could learn from looking at those documents.
22 There was no evidence that my client, who practiced before the
23 SEC for many, many years, had ever had any problem before this
24 case.

25 Let's talk about David Ben-Bassat and the Glendale

SUMMATION - MR. RIOPELLE

3710

1 account. You heard that David and Kyleen were close. They'd
2 done business together, of all kinds real estate, securities
3 business, all kinds of things for many years. They were
4 practically siblings or family members. David was Kyleen's
5 mother's boyfriend for years, many years, they were very
6 close. And keep in mind that my client had a perfectly legal
7 authority to give Glendale orders for Mr. Ben-Bassat's
8 account. This was not hidden. It wasn't hidden that Kyleen
9 Cane could enter orders in Ben-Bassat's account. There it is
10 in a Government exhibit signed by my client, Governments
11 142-4. That's in the records.

12 Nobody is hiding the fact that she entered orders in
13 Mr. Ben-Bassat's account. The trading in Mr. Ben-Bassat's
14 account, I submit to you, was consistent with an order to
15 George Castillo to sell the stock at a price of \$5 or better
16 as the market permitted. There is no evidence, we have not
17 seen texts between Kyleen and Mr. Castillo, we don't have
18 phone records or intercepted phone calls between my client and
19 Mr. Castillo demonstrating that she was on the phone with him
20 every day about this account. Far from it. She was a busy
21 lawyer doing many things for Cubed and many other clients
22 during this period.

23 Take a look at the trade confirms. You'll see that
24 every one of the orders that is executed by Mr. Castillo is
25 unsolicited. And that means it has to be consistent with the

1 client's order. It's an order that Mr. Castillo got from
2 either Mr. Ben-Bassat or my client. And it didn't come from
3 Mr. Castillo. There is no evidence of contact with Kyleen or
4 Ben-Bassat for each trade or adjustment in this, the bid and
5 ask, in this particular group of documents. So what these
6 show you are that an order was given at the outset and that
7 Mr. Castillo simply sold the shares off as the market gave him
8 an opportunity to do so.

9 And this is a perfect example, these confirms are a
10 perfect example of what is called circumstantial evidence,
11 where you see facts and infer other facts from them. Later on
12 I want you to listen closely to the Judge's charge about
13 circumstantial evidence. He'll tell you about coming to court
14 and see a guy walk into the courtroom with umbrella and a wet
15 rain coat and how from that evidence you can infer that it's
16 raining outside even though you can't see it. That's an old
17 story. Anybody who tries cases in this courthouse or any
18 other courthouse has heard it many times. It's a standard
19 jury charge.

20 There is a story that illustrates circumstantial
21 evidence perfectly. It's a story every one of you knows. I
22 want to recall it to your minds now. It is the story of that
23 evil felon Goldilocks and the Three Bears. You will recall in
24 that story the bears go out for a walk, leaving some porridge
25 on the table to cool down a little bit while they walk. And

SUMMATION - MR. RIOPELLE

3712

1 that burglar, the breaker and enterer Goldilocks goes to the
2 bears' home, tastes the porridge, eats some of it. Sits in
3 Baby Bear's chair and break it is, goes up and lays down in
4 Baby Bear's bed.

5 The bears return home. They discover that someone
6 has eaten the porridge because there is not as much porridge
7 in the bowl, that's circumstantial evidence. They discover
8 that someone has sat in Baby Bear's chair because the chair is
9 broken, that is circumstantial evidence. And then they go
10 upstairs and Baby Bear see Goldilocks in his bed and says,
11 there she is. That's direct evidence, Baby Bear sees
12 Goldilocks. And that's the difference. That's the
13 difference.

14 I submit to you that what Kyleen Cane wanted to
15 accomplish with the Ben-Bassat account by leaking these shares
16 into the market a little bit at a time was to keep predators
17 like Bell and Wexler, Josephberg and Azrak away from the free
18 trading shares. You heard telephone calls where she doesn't
19 want to discuss this account with these people too much. None
20 of them testified that they knew who David Ben-Bassat was.
21 She wanted to keep the group of free trading shares away from
22 the predators like that because she knew what they were
23 capable of. They would crush the stock if they were given a
24 chance to do it. She wanted to sell the shares of Cubed into
25 the market a little bit at a time to allow the market to

SUMMATION - MR. RIOPELLE

3713

1 develop and avoid a collapse.

2 She made sure she had the money to pay Ben-Bassat's
3 taxes and give him money to pay for an attorney when the
4 Government came calling. She looked after Mr. Ben-Bassat. He
5 was her friend, he's still her friend. And she told him, you
6 heard him testify, she told him to tell the truth. She was
7 not afraid of the truth. She and Mr. Ben-Bassat, as you
8 heard, remain very close friends, and even business partners,
9 even now. He continues to trust her. That's something you
10 should think about, ladies and gentlemen.

11 Don't be distracted. Don't be distracted by a whole
12 lot of irrelevant testimony about whether Mr. Ben-Bassat
13 signed one document or another himself. This case is not a
14 forgery case. Nobody is charged with signing some document
15 with Mr. Ben-Bassat's name when they shouldn't have. It's not
16 a forgery case.

17 This case is about the trading activity. The
18 trading that went on in that Ben-Bassat account that kept
19 Cubed stock price from being crushed. That's what this case
20 is about.

21 Now look, again, we submitted very few pieces of
22 paper in this case. We're relying primarily on the
23 Government's evidence, but one, I think our only paper exhibit
24 submitted, KCBB1, Kyleen Cane and Ben-Bassat one. This is a
25 series of documents. Remember we got into a whole rigmarole

SUMMATION - MR. RIOPELLE

3714

1 with Mr. Ben-Bassat, did you sign this, did you sign that,
2 what did your signature look like. This is a series of
3 documents. I'm going to show you just a few that
4 Mr. Ben-Bassat acknowledges are his signature.

5 Take a look at the first one, then I'll direct your
6 attention to the last letter in his name, this is KCBB1. Here
7 is the next one, the T looks different there, doesn't it.
8 Here is the third one, that's also his signature he says. So
9 that looks a lot different than the first two. Here is the
10 fourth one, that looks more like the second, but it doesn't
11 look like the first or the third. These are all documents
12 that Mr. Ben-Bassat acknowledges are his genuine signature.
13 He clearly signs his name a little differently at different
14 times. So he's not, and that is not something we should be
15 concerned about frankly. It is not part of this case.

16 He got one of those immunity deals ultimately,
17 right. He got a deal that kept him out of any trouble here.
18 And he got a deal after he ultimately said that a couple of
19 the documents with his signature on them weren't signed by
20 him; but this isn't a forgery case. This isn't a forgery
21 case.

22 You're free to infer that that's the way to get a
23 deal. This was the testimony about my client. Were you
24 shocked by her arrest? Very much so. Why? Answer, I never
25 dreamt that she is even capable of being in a position where

SUMMATION - MR. RIOPELLE

3715

1 she needs to be arrested. She had always been honest with
2 you? Answer, very much, yes. Very much yes.

3 Here is some more. And after meeting with the
4 Government you got immunity agreement that we saw earlier
5 today, yes? Yes. That's a fact, you got the agreement even
6 though you didn't feel you did anything wrong. Yes. But you
7 went ahead and insisted on getting an immunity agreement
8 before you testified, correct? I didn't ask for it, they
9 offered it. You took it, right? Answer, yes, yes according
10 to my lawyer's advice I did. Question, because you knew that
11 even an innocent person can be accused of a crime, correct?
12 Yes. Question, and you don't look good in orange, right? I
13 hate that color. That was Mr. Ben-Bassat's testimony.

14 How do you write that history book we talked about
15 at the beginning? How do you figure out what people intended,
16 what people want to do, what people understood at any point in
17 time? History books continue to be written about folks like
18 Julius Caesar. Historians continue to debate did Julius
19 Caesar cross the Rubicon because he was a narcissistic, crazy
20 person who was going to be the first version of a tyrant, was
21 that what he did? Or was he in fact representing the
22 interests of the ordinary citizens of the Roman Republic when
23 he crossed the Rubicon to try to restore order to the Senate?
24 What was Brutus up to when he stabbed Caesar? What he was up
25 to? Was he trying to kill a tyrant or his own ambition that

1 led him, together with others on the floor of the Roman
2 Senate, which is maybe the most famous murder in history.
3 Historians continue to debate these topics 2,000-plus years
4 later. I hope you don't spend 2,000-years on this case.

5 You'll decide what did Kyleen Cane intend? What did
6 she really intend in this case? How should you decide that?

7 Don't be distracted by the proof of motive, the
8 cash, proof about cash in the case and shares that went to
9 NPNC and all that stuff. Proof of motive, the Court will tell
10 you, is not a necessary element of the crimes with which the
11 defendants are charged. Proof of motive does not establish
12 guilt. It is immaterial what the motive for the crimes may
13 be. But the presence or absence of motive is a circumstance
14 which you may consider and bearing on the intent of a
15 defendant. You can consider it, but it's not itself a part of
16 the crime. It's not itself something that you must decide.

17 Don't be distracted by the Government's bogus
18 allegations of concealment. Here is that trading
19 authorization that my client had for the David Ben-Bassat
20 account. It's signed by her. It's in the account records,
21 nobody is hiding anything there.

22 How about the checks she signed for NPNC, we heard
23 about those yesterday. Her signature is on there. That's an
24 entity associated with her. Nobody denies that. She signed
25 all those check. She's not exactly Mata Hari with her

1 signature. Nobody is concealing.

2 Businesses do have names, NPNC was a business. It
3 had a name NPNC, so what? By the way, here is some for this
4 allegation of concealment in NPMC, here are the corporate
5 filings with the authorities in Nevada. They show Kyleen Cane
6 as a member of the corporation. They show Bryan Clark, her
7 partner of Cane Clark, as a member of the corporation. It's
8 all filed with the Government. Nobody is hiding anything.

9 There is her electronic signature at the bottom. So
10 nobody is hiding that she's associated with NPMC.

11 Here is another one NPMC Management LLC, Bryan
12 Clark, there is Bryan Clark's signature. Nobody is hiding
13 what that company is. It's a company that Kyleen and her
14 partner owned and worked with together.

15 And consider Ms. Mazella's testimony. Remember, she
16 was the FBI financial analysis who looked at a lot of the
17 financial records in the company. She showed that Cane Clark
18 paid a lot of funds into the Cubed taken in from investors.
19 They turned it over to Cubed, just as lawyers do. Nothing
20 suspicious about that. But Cane Clark was never paid for its
21 actual legal work. Lots of other firms were, Clyde Snow and
22 Sessions got theirs, Malone Bailey got theirs. Lots of
23 lawyers got paid in this case, but not Cane Clark.

24 I ask you what is consider what is missing from
25 Ms. Mazella's charts. She told you how \$265,000 came out of

SUMMATION - MR. RIOPELLE

3718

1 Mr. Ben-Bassat's account and into these two LLC companies that
2 are associated with my client, \$265,000 went there. The chart
3 does not account for the \$300,000 that Cane Clark advanced to
4 Cubed to pay for Northwest Resources on June 11, 2014. Once
5 that payment is accounted for Cane, Clark is still short
6 \$35,000. It's not as though this \$265,000 was some kind of
7 theft, right.

8 There were two payments out, we heard about this
9 yesterday, out of this account. The first 300,000 was a
10 payment that ultimately made its way to Titan investors, paid
11 out to the investors in Cubed. This was that first
12 distribution that guys like Mr. Wexler complained about wasn't
13 big enough, they weren't too happy it was only 300,000 but
14 that's what they got. This \$300,000 is also offset by the
15 300,000 advanced by Cane Clark for the purpose of Northwest
16 Resources. And remember another 300,000 went to Titan.

17 And then there is the \$225,000. This \$225,000
18 payment is just about equal to 39 percent, the total Cubed
19 trading which was 570 in the Glendale account. There is a
20 little bit of money that is left behind in the Glendale
21 account that is not transferred over to this U.S. bank
22 account.

23 The 225 that is paid to Mr. Ben-Bassat is actually
24 paid to him so he can pay the taxes that are associated with
25 the trades in the Glendale account. And then you can actually

1 see him paying his taxes, here is his federal tax payment
2 \$190,000. Ms. Mazella agreed with me that a payment to the
3 U.S. Treasury is likely a payment for tax. That's what
4 happened here.

5 So some of these charts don't include all the
6 information. But it's out there. You can find it. Take a
7 look at it.

8 You'll find that at the end of the day NPMC -- at
9 the end of the day you're not going to find that Kyleen Cane
10 is some sort of greedy, evil-grasping person. The shares that
11 this company NPMC got the company, that she is a partner in
12 with Bryan Clark, those are restricted shares. They couldn't
13 be sold for a year. They had to be held. That tells you
14 Kyleen and her firm believed in Cubed. They wanted it to
15 succeed. They wanted it to survive. The last thing Kyleen
16 Cane would want is a pump and dump scheme to destroy this
17 company. Because those shares would really be worth something
18 in a year, if the company survived and thrived. Kyleen Cane
19 and her partner Bryan Clark were not in it for the quick buck.
20 That's what you can infer from that.

21 Then there is this document, remember? Right before
22 the arrest her firm, Cane Clark, was issued what are called SH
23 shares to pay for the legal work that they had done for months
24 at that point. It was this filing \$128,000 of legal work as
25 of the end of May that had never been paid. The firm went

1 months without getting a check from Cubed because Cubed didn't
2 have any money. And ultimately the firm agreed to take shares
3 in the hope that the shares would stay afloat, would stay
4 worth something. If you're taking shares for payment of work
5 you've done for months before, the last thing you want to do
6 is see the company collapse in a pump and dump scheme.
7 Instead you make sure that a little bit is sold into the
8 market at a time so the price doesn't collapse.

9 Finally, I want you to consider the testimony of the
10 witnesses we did call right at the end of the case. We called
11 four separate character witnesses for Ms. Cane, four
12 successful businessmen, four gentlemen who had known Ms. Cane
13 for ten years, 15 years, a long period of time. They had all
14 done transactions with her. They all testified that based on
15 their extensive experience with her she is honest, she has
16 great integrity. You know what, despite all of this, she
17 still represents them now. They are loyal to her.

18 I think what you'll find if you consider her
19 character, and remember what Heraclitus told us, Character is
20 destiny.

21 What you'll find is that my client, Ms. Cane, was
22 very committed to Cubed, as she was to her other clients, like
23 Regenecin, Randy McCoy and John Weber. They testified as
24 character witnesses. She's a committed person who wants to do
25 all she can to help her clients. You'll find that she was an

1 entrepreneur. She's not an institution, not a giant law firm
2 with 500 people. She's someone who represents smaller
3 companies, help them survive, help companies like Regenecin
4 get on their feet. She is not representing Citibank and
5 institutions like that.

6 I'm sure you will find that she was scrupulous about
7 the press releases and the public filings that Cubed made,
8 because you have heard no evidence that there was some
9 egregious fraud in connection with them. She was a creative
10 person, a problem-solver, ready to try innovative solutions
11 for Cubed's problems, including something like the David
12 Ben-Bassat account. That's a creative solution to the problem
13 of leaking stock in the market to prevent the type of pump and
14 dump that ruined companies like Code Smart and Star Stream.
15 She wanted to protect Cubed from people like Wexler and Azrak
16 and Bell. She was loyal to her clients, very loyal. And
17 committed to helping Cubed succeed and protecting its share
18 price to the extent she could.

19 That's what the trading shows. That's what the
20 evidence shows. That's what these character witnesses show.

21 I want you to consider carefully the Court's
22 instruction on character evidence. You should consider this
23 evidence together with all the other evidence you've heard in
24 the case. This evidence may alone by itself convince you that
25 it is improbable that a person like Ms. Cane would commit the

1 offense charged. And if considering this evidence together
2 with all the other evidence in the case a reasonable doubt has
3 been created, then you must acquit this defendant of all the
4 charges.

5 Ladies and gentlemen, at this point our rebels all
6 have ended to, quote Shakespeare. In a short while you'll
7 deliberate on my client's fate. You will decide whether she
8 will suffer the brand of a felony conviction in this case or
9 whether she will walk out without that indignity.

10 In a few days all that's happened here over the last
11 few weeks will fade like a dream in your mind. You'll
12 remember a few things, maybe something one of the witnesses
13 said, some part of your deliberations, hopefully you've made
14 some friends amongst your fellow jurors, but what has happened
15 over the last five weeks will fade for you. You'll go back to
16 your lives. You'll go on to whatever is next, your jobs, your
17 families, you devoted so much time to this here. I will go on
18 to my next case, right. The Government lawyers will go on to
19 their next case. Mr. Caliendo will go on to his next case,
20 but interestingly enough, he won't leave the courtroom. His
21 next case is right here; my partner has the next case before
22 Judge Vitaliano on trial. I get to leave. But hopefully
23 he'll move up on the front of the table.

24 But for you this will all fade. It will be, I hope,
25 a very interesting experience. One you found very fulfilling

SUMMATION - MR. RIOPELLE

3723

1 as citizens of our country. But it will fade. It will become
2 one more interesting thing to talk to people about.

3 The same really isn't true for Ms. Cane. She spent
4 the last four years branded a felon by the Indictment in this
5 case. That kind of thing is not good for a law practice.
6 She'll never be able to completely get out from under the
7 damage that's been done to her by this, by this prosecution.
8 But she can be spared a felony conviction. You could do that
9 for her.

10 I've tried to show you this morning the reasons why
11 you should do that, why the Government's proof has fallen
12 short. And I submit to you that you should do that. You
13 should spare her that felony conviction.

14 So I ask you, I ask you, ladies and gentlemen, to do
15 your duty. In the Old Bailey in London, which is the oldest
16 continuously functioning criminal court in the
17 English-speaking world, there is a carving on the wall that
18 reads, "In these hallowed halls the crown always wins." And
19 what that means is that an acquittal or a conviction, it's all
20 the same to society, the crown in England, it's the same. The
21 crown/society always wins if you do the right thing. If you
22 do the right thing, society wins.

23 And in this case if you do what Lincoln encouraged
24 the population to do back in the Second Inaugural -- and by
25 the way, Lincoln was a pretty good darn trial lawyer before he

SUMMATION - MR. RIOPELLE

3724

1 became a politician -- if you go ahead with malice toward not,
2 with sympathy and charity for all. If you well and truly
3 consider the evidence in this case, as you are bound to do by
4 your oath, I submit to you that you will reach the right
5 verdict, the only verdict for my client, Kyleen Cane, which is
6 not guilty.

7 Thank you very much for listening so patiently to
8 me.

9 One more thing. I want you to know this is
10 absolutely the worst moment for any lawyer in any case. I
11 will sit down, and the minute I sit down I will think to
12 myself, oh, my God I forgot to tell them about this evidence.
13 I forgot to tell that great story that Gus Newman taught me 25
14 years ago.

15 The Government will get to stand up and make its
16 rebuttal argument, and that's right, that's the way it should
17 be, because they have such a heavy burden of proof. And
18 Ms. Jones I'm sure will give a excellent rebuttal argument. I
19 want you to be thinking as you go back in the jury room,
20 because I won't get to talk to you again, I want you to be
21 thinking as you deliberate all the great arguments Ms. Jones
22 will make, what would Mr. Riopelle say about that. What is
23 the other evidence in the case that rebuts that.

24 If the presumption of innocence that will travel
25 with my client into that jury room with you and the great

SUMMATION - MR. RIOPELLE

3725

1 burden in this case are to mean anything, are to mean
2 anything, they require that of you, they require you to look
3 at the Government's arguments and think what the counter
4 arguments must be.

5 Again, I think if you do that, if you carry out your
6 oath as jurors will find that Ms. Cane is not guilty. Thank
7 you very much.

8 (Continued following page.)

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1 THE COURT: Thank you, Mr. Riopelle.

2 Ladies and gentlemen, we'll be taking our
3 mid-morning break; a little late but, nonetheless, we will be
4 doing that. As you know, the next thing you will hear will be
5 the rebuttal argument of the Government.

6 All of that means that the case is not over, so the
7 usual recess rules continue to apply: Continue to keep an
8 open mind; do not discuss the case amongst yourselves or with
9 anyone else you may run into in the back; and we'll see you in
10 about 15 minutes.

11 (Jury exits.)

12 MR. BISHOP: Your Honor, may I be heard?

13 I'm the member of the media who requested the
14 wiretap recordings.

15 THE COURT: Yes.

16 MR. BISHOP: My name is Stewart Bishop. I'm with
17 Law360.

18 I just wanted to -- I respect your decision but just
19 wanted to cite some Second Circuit authority that there is a
20 presumption in favor of public inspection and copying of any
21 item entered into evidence at a public trial.

22 The Second Circuit said it would take the most
23 extraordinary circumstances to justify restrictions on the
24 opportunity of those not physically in attendance in the
25 courtroom to see and hear the evidence.

1 I respect your decision, your Honor, but just ask
2 that you reconsider.

3 THE COURT: I hear your argument. I have not
4 prevented you from taking and getting the opportunity to have
5 that evidence, just delayed when you can have it; not until
6 after the jury verdict has been returned.

7 What was said in those excerpts is already in the
8 public record. And if you want to communicate those excerpts,
9 you're free to do so. So, the information is in the public
10 record.

11 What's not in the public record is the audio. The
12 rules of this court generally prohibit the transmission of
13 audio or video. And when this case is over, you'll be more
14 than free to do that.

15 MR. BISHOP: Thank you.

16 See you in fifteen.

17 MR. BINI: We have one other issue Ms. Jones will
18 raise.

19 MS. JONES: There's one thing I wanted to discuss
20 before I give my rebuttal about a point of law.

21 Yesterday during Mr. Ross' closing, he argued to the
22 jury that unless they found that the Government had proven
23 beyond a reasonable doubt that Mr. Discala manipulated all
24 four companies, CodeSmart and Cubed and Staffing Group and
25 StarStream, then they have a basis to find him not guilty.

1 They're putting this extra burden on us that because we
2 charged schemes involving all four stocks, we have to prove
3 all four stocks. Clearly, that's not the law, that's not the
4 case. Ms. Cane has only been charged with the Cubed,
5 participating in that part of the conspiracy.

6 The Government plans to argue during my rebuttal
7 that what we need to prove is that a conspiracy existed and
8 that the charged defendant became a knowing member of that
9 conspiracy. So, for the securities fraud conspiracy, all we
10 need to prove is that the conspiracy to defraud involved at
11 least one security and at least one overt act has been proved.
12 And as for Count Two, the unlawful act charges a scheme to
13 defraud involving use of mails or wire.

14 MR. ROSS: Judge, I think I went through those
15 elements in the beginning of my closing argument.

16 THE COURT: I guess the point is she's only
17 inquiring do you have any problem with her articulation of
18 what the law is?

19 MR. ROSS: No, absolutely not.

20 MS. JONES: Then we're good.

21 THE COURT: That's what I thought. The jury will be
22 reminded what either have you said means nothing because it
23 only counts what I said.

24 See you in fifteen.

25 (Recess taken.)

SUMMATION - MS. JONES

3729

1 THE COURTROOM DEPUTY: Court is back in session.
2 Counsel for both sides are present, including Defendants.

3 THE COURT: Ms. Jones, are you ready?

4 MS. JONES: I am, thank you.

5 THE COURT: Okay.

6 (Jury enters.)

7 THE COURT: Be seated, please.

8 Counsel will stipulate that the jury is present and
9 properly seated?

10 MS. JONES: Yes, your Honor.

11 MR. SHROYER: Yes.

12 MR. RIOPELLE: So stipulated.

13 THE COURT: Thank you, counsel.

14 Ladies and gentlemen, welcome back. I hope you had
15 a chance to refresh. We are now ready to hear the closing
16 argument, which will be the last of the arguments that you
17 will hear by counsel, and it will be given to you by Assistant
18 United States Attorney Shannon Jones.

19 MS. JONES: Thank you, your Honor. May I proceed?

20 THE COURT: You may proceed.

21 MS. JONES: Thank you.

22 Good afternoon, everyone. For the last five weeks,
23 you have heard overwhelming evidence that Abraxas Discala and
24 Kyleen Cane manipulated the stock of securities. And
25 particularly, Discala and Cane manipulated the price of Cubed

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1 together. And this was just one part of the conspiracy led by
2 Discala to manipulate the stock of the manipulated public
3 companies. Those are CodeSmart, the Staffing Group,
4 StarStream, and Cubed.

5 And why did they do this? To enrich themselves at
6 the expense of others.

7 The overwhelming evidence presented to you proves it
8 beyond a reasonable doubt. Defense counsel have stood up and
9 have done everything they can to distract you from the
10 evidence of this case. I'm here to bring you back to the
11 evidence, to the witness testimony that you heard, the
12 exhibits that you've seen.

13 And the judge will instruct you it's the evidence
14 that matters, not what the lawyers tell you. The lawyers'
15 words are not evidence. Just because a lawyer says something
16 in its closing doesn't make it so. The evidence is the
17 testimony, the documents, the recordings. And the lawyers
18 don't tell you what the law is, the judge does. And I submit
19 to you that after you hear the judge's instruction on what the
20 law is, it will be clear to you that each defendant is guilty
21 beyond a reasonable doubt on all counts.

22 Now, you've heard four hours of summary yesterday
23 from AUSA Patrick Hein about the evidence presented in this
24 case. I'm not going to go through all that again. You heard
25 it yesterday. You'll have the exhibits; you can take a look

1 at them. But I'm here to just address some of the key defense
2 points that were raised so that you can think about them when
3 you go back to your deliberations.

4 The Government has to prove the Defendants' guilt
5 beyond a reasonable doubt. We understand that. We embrace
6 that burden. And I submit to you we have done that in spades.

7 The judge will explain to you what that term
8 "reasonable doubt" means. A reasonable doubt is a doubt that
9 a reasonable person would have after carefully considering all
10 the evidence and applying common sense. It's not based on
11 speculation, it's not based on a whim. And I submit to you
12 that after you hear all the evidence -- you have heard all the
13 evidence, but after you consider the evidence, it will be
14 clear to you we've met that standard for each defendant for
15 each count.

16 Now, I want to start briefly talking about the
17 Government's witnesses, the serial liars. Both Mr. Ross and
18 Mr. Riopelle called the Government's witnesses, basically all
19 of them -- the agents, the cooperators, the people who got
20 immunity -- liars. Now let's talk about that.

21 You heard from Matt Bell, Marc Wexler, Victor Azrak,
22 and Jamie Sloan. Discala even said that his former secretary
23 Marleen Goepel was lying to you.

24 Why did the defense counsel call these people liars?
25 Because, as the judge will instruct you, the testimony of even

1 just one accomplice is enough to convict as long as you find
2 that testimony credible and it establishes guilt beyond a
3 reasonable doubt.

4 But we are not asking you to do that. We are not
5 asking you to rely on the word of just one cooperator; you
6 heard from several. And it's not -- this case is not about
7 the cooperators. You've heard from the cooperators. They
8 explained to you what the text messages meant, they explained
9 to you what the wiretap calls meant.

10 But let's keep in mind Victor Azrak, arrested on
11 July 17; Marc Wexler, arrested on July 17; Matt Bell, arrested
12 July 17. You know who else was arrested on July 17? AJ
13 Discala and Kyleen Cane.

14 This case is not built on cooperating witness
15 testimony. This is built on the wiretap recordings and the
16 text messages and the trading records and the bank records and
17 that mountain of evidence that was presented to you that
18 clearly shows that these two defendants are guilty beyond a
19 reasonable doubt.

20 But those cooperators, they came in and they
21 testified and they provided some helpful, I think, testimony
22 about what do certain text messages mean -- what do certain
23 text messages mean, what do certain wiretap recordings mean,
24 to help explain what the evidence is to you.

25 Now, these cooperating witnesses, they did plead to

SUMMATION - MS. JONES

3733

1 serious crimes. You should scrutinize their testimony
2 carefully. And you've heard defense counsel say if someone
3 has lied even once in the past, if they lied when they were
4 arrested and they were terrified and they didn't have counsel,
5 then you should disregard everything they say.

6 But, no, witness credibility is for you to decide.
7 You decide if someone was telling you the truth on the stand
8 or not. When you make that determination, think about: Did
9 what they say make sense? Did what they say, was that
10 corroborated by other evidence? Is it consistent with
11 everything else that you learned in that case?

12 Because when you think about it, you've got to think
13 to yourself: What were the lies here? Who lied to you and
14 what did they lie about?

15 Let's think about that. Like Victor Azrak, what did
16 he say to you? He said, I engaged in coordinated trades with
17 AJ Discala and I was aware that Kyleen Cane was controlling
18 this escrow and that was helping to control the stock price.

19 You saw the text messages. You heard the wiretap
20 recordings. Is there any reason for you to doubt that what he
21 was telling you was the truth?

22 Because what if he was lying? That basically means
23 he lied about committing a crime that implicated himself.

24 If those things weren't true, then what did he do
25 wrong?

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1 The only thing that Victor Azrak did in this case
2 that resulted in him being guilty of stock fraud was
3 coordinating trades with AJ Discala. If that's a lie then
4 what is he doing here?

5 Let's talk about Matt Bell. Matt Bell, he said he
6 wasn't completely honest when he first got arrested. He
7 minimized. He was scared. He had his reasons. But you have
8 to think about those text messages, those text messages day
9 after day after day after day with Mr. Discala where they're
10 sending bids and putting in market orders and talking about
11 ITEN and talking about StarStream and talking about Staffing
12 Group and talking about Cubed and ask yourself when you
13 consider that evidence and you consider the wiretap calls and
14 you consider and the bank records and the trading records, do
15 you have any doubt that he was telling you the truth?

16 And, again, let's talk about Marc Wexler. Marc
17 Wexler, what did he do? He coordinated trades with
18 Mr. Discala and he coordinated the manipulation of Cubed with
19 Kyleen Cane and Mr. Discala. And, again, he had the wiretap.
20 We had the wiretap calls and we had the bank records and we
21 had the trading records. And you could see whether or not
22 what he was saying to you made sense or not.

23 And to the extent that defense counsel complied or
24 argued that these witnesses were coached or that they have
25 some motive to lie to please the Government, ask yourself:

1 Does that make sense?

2 You saw their cooperation agreements. Their
3 cooperation agreements require them to tell the truth. And if
4 they don't tell the truth, then they don't get those 5K1
5 letters. And there's so much evidence that's corroborating
6 them including them, including each other, that I think it
7 would be fairly obvious to anyone if they were not telling the
8 truth.

9 And you did hear about one discrepancy between Marc
10 Wexler and Jamie Sloan. Mr. Riopelle brought that up. He
11 talked about that bribe. Marc Wexler mentioned testified that
12 he recalled it was a \$10,000 bribe, Jamie Sloan said I think
13 it was a \$4,000.

14 You have to decide for yourself, do you think one of
15 them was lying or do you think one of them made a mistake?
16 Because it's one or the other.

17 When you think about did they make a mistake or did
18 they intentionally lie, why would they lie? I don't think it
19 makes sense that someone is going to pretend to pay a bigger
20 bribe than they did to seem like a big shot. That seems
21 ridiculous.

22 You have to think about the witnesses and their
23 testimony. Marc Wexler, what did he say? He said, I paid her
24 \$10,000, that's what I recall, I don't recall where I got that
25 money, I don't recall -- like, you know, he didn't recall any

SUMMATION - MS. JONES

3736

1 of the other details. Ms. Sloan testified it was \$4,000, she
2 remembered there was talk about \$10,000 but she didn't get
3 that money.

4 Again, why would either of these people lie about
5 this? What matters is do you think that their testimony about
6 the guilt of the defendants was corroborated? Did it make
7 sense? And I submit to you that it did.

8 Now, you also heard Mr. Riopelle attack the
9 credibility of those Northwest Resources shareholders. You
10 heard from Taylor Edgerton, Wesley Smith, and Marche Godffrey.
11 And he's telling you that because these men at first were not
12 completely honest with agents when they were questioned, that
13 you should disregard their testimony.

14 But ask yourself, when they came in here and
15 testified did what they say make sense or were they lying
16 about that?

17 Did Taylor Edgerton lie to you about being a fake
18 CEO of a company?

19 Do you really think that man, who was a former
20 dishwasher and warehouse worker, decided to wake up one day
21 and open his own mining company?

22 Do you think that guy got \$20,000 out of his own
23 pocket and formed this mining company?

24 Do you think any of these investors, like Marche
25 Godffrey -- these fake investors, Marche Godffrey, the Smith

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SUMMATION - MS. JONES

3737

1 family, that they would invest \$600 in a mining company run by
2 someone like Taylor Edgerton?

3 Of course not. The Northwest Resources mining
4 company was ridiculous from the outset. There's no way that
5 anyone was going to spend any money of their own to form that
6 company to actually be a mining company.

7 And Marche Godffrey, you heard him. What did he lie
8 about? What was the big lie with Marche Godffrey?

9 His lie was he didn't tell agents who gave him that
10 \$40 to sign the papers. He said it was some guy outside of
11 the supermarket, but when he came in here to testify he said:
12 You know what? That wasn't true. I'm here in court, I'm
13 under oath, I'm going to tell the truth. And the truth was it
14 was my barber, Gary Scoggins.

15 Why would somebody -- I'm sorry, he said: It was my
16 barber, Fat Matt. He didn't even know the guy's name, but he
17 identified the picture.

18 Why would anyone lie about that? It just doesn't
19 make any sense.

20 Is it more plausible that he was paid 40 bucks to
21 sign these papers or is it more plausible that he actually
22 invested \$600 of his own money in a mining company and then
23 never followed up about where his stock certificate was?
24 Absolutely not.

25 Why do we care about this?

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1 Why do we care about Northwest Resources?

2 Why did we have these witnesses come in here and
3 talk to you about these events that happened in 2011?

4 The reason why we did that is because this is how
5 Kyleen Cane got control over those Cubed shares. This is
6 where it started. And you have to think to yourself: Why did
7 they go through this process? Why did Cane Clark round up
8 these 30 fake investors? Why did they invest this money? Why
9 did they, you know, buy this mining claim that no one had any
10 intention of using?

11 They did it because these were the steps that they
12 needed to do to get the stock registered with the SEC so then
13 it would be free-trading shares so then they could sell the
14 shell company.

15 And ask yourself: Is it really plausible that this
16 was all Joe Laxague? That he was running around on his own,
17 handing out \$40,000 to pay off Taylor Edgerton to pay for that
18 initial investment that paid for the big mining claim and the
19 geologists?

20 And to pay those investors, someone had to come up
21 with that \$600. Somebody had to come up with that total of
22 \$18,000 to deposit in the bank account to make this look real.

23 And why were they trying to make this look real?
24 Because this is what you needed to do to register this company
25 with the SEC and get those shares to a point where they could

1 be free-trading.

2 And then what did they do? They sold that shell.

3 And who is in charge of that firm? Kyleen Cane.

4 And who was paid \$325,000 when that shell was sold
5 to AJ Discala and Marc Wexler? Cane Clark, to the bank
6 account that she controls.

7 That's why this matters.

8 And what you have when Cubed goes public is you have
9 Kyleen Cane in control of all of those share certificates.
10 All of those share certificates from those fake shareholders
11 who supposedly invested in this company in 2011.

12 That's how she got control over this company. And
13 it was all based on lies. All the SEC filings about Northwest
14 Resources, about who was really in charge of this company,
15 where did the money come from, who actually invested into this
16 company, it was all lies. It was all lies to create a shell.

17 And you heard what Cane Clark does. You heard what
18 Kyleen Cane does: She sells shells.

19 Now, there's nothing necessarily illegal about
20 selling a shell. But it's not legal to make a fake company
21 with fake shareholders and file things with the SEC that are
22 not true to get that shell. And that's what happened here.
23 And, so, now you have a fake shareholder, a fake company, a
24 shell company, that now can be sold and be used in one of
25 these alternative public offerings to take a company public.

1 And that's what happened here and that's why we care
2 about Northwest Resources.

3 Now, I'm going to come back to some of Cane's
4 arguments later, but first I want to turn to a couple of
5 arguments that Mr. Discala's counsel raised yesterday about
6 SSET and TSGL.

7 I think we're going to need the Elmo, William.

8 Now, most of the evidence, not all, but most of the
9 evidence in this case that was presented to you related to
10 CodeSmart and Cubed. And I submit to you there was
11 overwhelming evidence with respect to Discala as to both of
12 those counts, both of those stocks, and with respect to
13 Ms. Cane as far as Cubed goes.

14 But Mr. Ross brought up those other two stocks.
15 First of all, he brought up some other companies that have
16 nothing to do with this case, they're not relevant, I don't
17 even know why he was mentioning them. But that's not what
18 this case is about. This case is about the four stocks that
19 are the manipulated cover companies charged in the indictment:
20 CodeSmart, StarStream, the Staffing Group, and Cubed.

21 So, let's talk about StarStream and the Staffing
22 Group. Mr. Ross argued that we failed to prove that Discala
23 conspired to commit fraud with respect to those two stocks.
24 Well, that's not correct.

25 First off, what did both Jamie Sloan and Marc Wexler

SUMMATION - MS. JONES

3741

1 tell you? That Marc Wexler paid Jamie Sloan a bribe so she
2 would stuff StarStream stock into her clients' accounts.

3 And Wexler told you he told Discala about it. Of
4 course he did. They were partners and they were friends and
5 they talked on the phone, as you saw, all the time.

6 So, now let's look at some of that evidence of the
7 StarStream and Staffing Group manipulation. First, look at
8 some of those Bell texts from Government 132-2.

9 First there are these text messages on January 10.
10 And what do they say?

11 Can you have someone buy a bit of SSET? If you can,
12 5,000 at 1.33.

13 Nice.

14 TY.

15 I'm on the bid for TSGL for point three.

16 Smart.

17 Don't chase, just showing support.

18 Let's take a look at another set of text messages
19 from January 13, 2014. AJ Discala to Matt Bell.

20 Need TSGL and SSET. I'm focusing on bridge too all
21 day.

22 Great. Sounds good. Bid for size on TS.

23 On it. At 34.

24 Okay.

25 And then let's look at January 30, 2013 -- sorry,

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SUMMATION - MS. JONES

3742

1 2014.

2 I know tomorrow I'm blasting SSET.

3 Okay. I'll provide support.

4 I put in a bid at 70 on SSET. 7,000 shares.

5 We're gonna rip it.

6 I moved my bid up to point eight five.

7 Nice.

8 Bid 97 for 1K.

9 Try to take VFIN out for 1K.

10 Back and forth, back and forth, back and forth.

11 These two are coordinating on both SSET and TSGL.

12 Also, let's look at the transcript from 198-74.

13 Remember, this is also Count 7. You saw this yesterday during
14 Mr. Hein's presentation. This one is from May 9 of 2014.

15 Mr. Discala says to Mr. Azrak: Oh, do you own any
16 SSET?

17 No.

18 Okay. We're going to buy this effer back. I'm
19 going to pound it.

20 Really?

21 Yeah. I'm gonna buy it, I'm gonna pound it. I'm
22 gonna get the price down.

23 He wants to push the price down on this stock to 11
24 cents.

25 On that second page: Where is it? Where is it at

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1 right now?

2 Eleven cents.

3 We're gonna buy the shit out of it. Me, Marc, you,
4 we're gonna buy it and then we're gonna rip it back up.

5 This is manipulation. They're working together to
6 try to push that price down and then they want to jack it back
7 up.

8 You heard Mr. Ross yesterday give this long
9 discussion about how these were real companies that
10 Mr. Discala really cared about.

11 Mr. Discala cares about himself. He cares about his
12 pocketbook. He doesn't care about these companies.

13 There was also a lot of discussion yesterday from
14 Mr. Discala about these are real companies with real products.
15 This case is not about whether or not these are real companies
16 with real products, this case is about was the stock
17 artificially manipulated to deceive investors? And it's clear
18 that it was.

19 What happens when stock is manipulated? When the
20 stock is manipulated, that means that it's at an artificially
21 high price that does not reflect the merit of the company.

22 You heard that's what happened with CodeSmart.
23 There was text after text after text between AJ Discala and
24 Matt Bell about walking up the price and selling it.

25 You heard Mr. Discala on the stand. You can make

1 your own assessment about his credibility and what he said.

2 But what did he tell you about this text with Matt
3 Bell? He told you first: Oh, I didn't sell any CodeSmart
4 until May 23.

5 So ask yourself, what was going on with all those
6 texts between May 13 and May 23 about buy this, bid that, do
7 this, do that? They're coordinating the sells.

8 And you have to also ask yourself: What is going on
9 here? Mr. Discala is a seller. He's not a client of Matt
10 Bell's. Matt Bell's clients are his Alamo customers, those
11 customers that relied on him to make investment decisions for
12 them and buy stock that was appropriate for their portfolios.

13 And what did he do? He bought a ton of CodeSmart
14 and stuck it in their accounts. And at gradually increasing
15 prices.

16 This is not the way the market is supposed to work.
17 When you want to buy something, you want to buy it for as
18 cheap as you can. When you want to sell something, you want
19 to get as much money as you can. Between those two competing
20 desires of I don't want to pay more than I have to and I don't
21 want to sell it for less than I have to, that's where the
22 price is supposed to be.

23 What are Mr. Discala and Matt Bell doing?

24 Mr. Discala is saying: Go point eight, go point
25 nine, go point ten.

1 And Matt Bell is like: Filling it, filling it,
2 filling it.

3 He was getting his clients to pay more and more
4 money so Mr. Discala can sell it at higher and higher prices.

5 This is not how the market is supposed to work.
6 This is stock fraud and that's what they were doing.

7 Now, what else did Mr. Ross argue to you about
8 StarStream and the Staffing Group? He suggested to you that
9 we must find Mr. Discala guilty of conspiring to manipulate
10 all four stocks beyond a reasonable doubt to convict him of
11 either of the conspiracy counts.

12 I suggest to you that Mr. Ross misrepresented a lot
13 to you if that's what he was trying to imply.

14 The judge will explain the law to you. And I will
15 believe he will tell you what the Government needs to prove
16 for the conspiracy counts are that: One, a conspiracy
17 existed, meaning that at least two people agreed to commit an
18 unlawful act charged in that conspiracy count; and, two, the
19 charged defendant became a knowing member of that conspiracy.

20 For Count One, the unlawful act charged is
21 securities fraud, so we need to prove that a conspiracy to
22 defraud involved at least one security and that at least one
23 over the act has been proved.

24 And what's an overt act? An overt act is some step
25 that any member of the conspiracy takes in furtherance of that

1 conspiracy.

2 And, so, for Count Two, the unlawful act charged is
3 a scheme to defraud involving the use of mail or the wire.

4 The Judge will describe the elements of the crimes
5 to you at length. Listen to him, not the lawyers, about what
6 law must be proved.

7 Now, let's take a step back and think about the
8 arguments that have been made here in the last two days.

9 Let's be clear about one thing: It is against the
10 law to artificially control and manipulate stock prices. The
11 judge is going to explain this to you in his instruction.

12 Matt Bell, Marc Wexler, Jamie Sloan, Victor Azrak,
13 they've all told you that they worked together to artificially
14 manipulate stock prices and that's why they pled guilty. And
15 those witnesses told you they committed their crimes with AJ
16 Discala an Kyleen Cane.

17 In this case, you have heard so much evidence of
18 blatant stock fraud; hundreds of text messages, explicit phone
19 calls. Both Discala and Cane are caught on tape committing
20 the crimes.

21 And the defense counsel argued: Oh, no. Oh, no.
22 Nothing wrong here, they didn't do anything wrong. They were
23 just trying to protect the company. They were just trying to
24 keep the stock price up.

25 Keeping the stock price up artificially by working

1 with other people, that's stock fraud. It's not okay.

2 You know, the judge will explain the law to you.

3 What he's going to make clear to you is that no, it's not okay
4 to artificially manipulate the stock price of these stocks.

5 Let's get back to reality here and talk about the
6 facts and the evidence and the law, not the defense theories
7 about how clearly illegal conduct is somehow okay just because
8 they say so.

9 Mr. Riopelle argued with respect to Ms. Cane that
10 everything with the company was done out in the open.

11 Are you kidding me? They concealed everything.
12 Kyleen Cane hid the fact that she controlled all the
13 free-trading stock. That's not disclosed anywhere; that's not
14 in any SEC filings, that's not in the private placement
15 memorandum given to investors.

16 There are eight million free-trading shares. Those
17 original Northwest Resources shareholders, those shareholders
18 that are described in the original Northwest Resources SEC
19 filings, you can see that that stock is out there. You can
20 see that that is the free-trading stock. Nowhere is anyone
21 told outside of this conspiracy that Kyleen Cane controls all
22 that stock.

23 Why not? Because no one would buy this stock if
24 they knew one person was controlling and setting the price.
25 That's ridiculous. You want to invest in a tech company where

SUMMATION - MS. JONES

3748

1 they're saying, oh, this stock is worth \$5, \$5.50, \$6, but, by
2 the way, it's all being controlled by one person who's leaking
3 that out as the market demands.

4 No, this is not about what the market demands, this
5 is about artificially keeping that price up where they want
6 it. They want it up above \$5 and that's what Kyleen Cane
7 does. She keeps that price up and she does it by controlling
8 the supply. That's her job. If she doesn't sell it, the
9 price can't drop.

10 That's not how the free market is supposed to work.
11 She doesn't own that stock and, yet, she is controlling it and
12 she's controlling the price. And she's hiding it and you know
13 she's hiding it. No one is told about it. It's not in her
14 name, it's in her good friend David Ben-Bassat's name.

15 Why is that? Why is that?

16 Mr. Riopelle is like, There's nothing wrong with
17 letting someone else trade stock in your account.

18 Yeah, but there's also nothing preventing Ms. Cane
19 from opening up her own account in her own name and doing this
20 trading out in the open and telling everyone that she's doing
21 it so everybody knows what the situation is when they make
22 that decision to buy the stock. And they hid it. Because
23 they did not want the market to know.

24 So, what happens when you don't control the price?
25 What happens when you just let normal market conditions apply?

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SUMMATION - MS. JONES

3749

1 What happens is that the stock price is based on
2 what the company is worth. It's not based on some fantasy
3 idea of someday this will be really great and will be worth
4 this so it's okay to keep it up here. No. The price is
5 supposed to be what it's worth at that moment based on what
6 people are willing to sell it at and what people are willing
7 to buy it at.

8 Let's talk about a couple of the other stocks here.

9 What happens when the control doesn't work?

10 What happens when you can't keep that price
11 artificially up?

12 Well, you heard with CodeSmart it started off at \$3,
13 went up to \$6, went back down, went back up. And then, when
14 the control was done, when it's just based on the merits of
15 the company and there's no artificial inflation of the stock
16 price, where is that the stock trading in the summer of '14?
17 It's like ten cents.

18 Let's talk about StarStream. You heard Marc Wexler
19 testify. He wanted to manipulate that stock price. He wanted
20 to get it up. He tried to get people to stuff it in people's
21 accounts. No one would do it.

22 And what happened to that stock price? It gets
23 deposited into his account and there's like -- it starts with
24 a price of \$5 and it immediately drops. He can't sell that
25 stock to save his life. He gets a couple of sales out, \$1.50,

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SUMMATION - MS. JONES

3750

1 \$1.40, \$1.30. And you heard in that transcript that by the
2 summer it's trading at 11 cents, 75 cents.

3 It doesn't matter that it was a real company that
4 had some association with The Butler. What matters is what
5 people were willing to pay for that stock. And what people
6 were willing to pay was almost nothing.

7 And that's the same thing with the Staffing Group.
8 Sure, it might have been a real company, it might have had
9 some business, but where was it trading in the summer of 2014?
10 25 cents, 30 cents. You heard Victor Azrak testify he paid,
11 like, almost 50 cents for that stock and it lost half of its
12 value.

13 That's what happens when you don't manipulate a
14 stock price: Its value reflects what the company is worth.

15 And if the company is not worth much, the stock
16 price should be low.

17 Kyleen Cane knew she controlled all the shares. She
18 knew that control was illegal and that's why she was hiding
19 it.

20 You heard Mr. Riopelle argue, Oh, she said no
21 texting because she's older and doesn't like to text.

22 You guys, you saw the text messages. The people who
23 are texting her are AJ Discala and Marc Wexler. Those two --
24 she keeps telling them: No texting; let's call. No texting;
25 let's talk on the phone.

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SUMMATION - MS. JONES

3751

1 And they keep texting her. It's like she can't stop
2 them. She knows that is not the smart way to commit a fraud
3 scheme. She knows you shouldn't have it in writing, and they
4 can't seem to help themselves because they keep texting her.

5 And those texts show that they are working together.
6 They are intentionally coordinating their trades and
7 concealing that control.

8 For example, on April 19, you saw that text in
9 Government Exhibit 129-25, Discala writes: Make sure there's
10 enough at 5.25. Don't want it going higher.

11 And what does she respond?

12 This is what we should talk about, not text. I'll
13 call you tomorrow. Very important.

14 On June 6, 2014, Government Exhibit 129-57, there's
15 a text exchange between Marc Wexler and Kyleen Cane. He texts
16 her about the Titan distributions: I'll call you Monday with
17 the account detail.

18 She writes back: Please call. No more texting.

19 On June 10, from Wexler, again regarding the Titan,
20 distribution: Speak in ten? Sorry for the text.

21 She's like: Okay, but no texts.

22 She doesn't want to talk about this in text messages
23 because she knows what she's doing is clearly illegal.

24 Let's look at some of the other texts that show she
25 working with AJ Discala and Marc Wexler.

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SUMMATION - MS. JONES

3752

1 Look at Government Exhibit 129-31 again: Aloha,
2 Kyleen. Do you think we could take it up to at least 5.30
3 tomorrow? If so, would you give direct or give permission to
4 Glendale? We have demand but need a good visual, especially
5 because we have so much news opportunity tomorrow. Please,
6 please. Thanks so much. Everything is great.

7 And what does she do? She texts.

8 In Government Exhibit 129-107, she texts: Here's
9 George's number, George at (818)907-1505.

10 And she texted him: CRPT between 5.25 and 5.30.

11 Let's look at Government Exhibit 129-46: Kyleen,
12 can we just ease into \$6.35? We have some buying.

13 Okay.

14 Ky, is everything okay? Still on track?

15 Yes. Call me. No texts.

16 What does this show? This shows that she is
17 participating in the conspiracy to manipulate the stock. She
18 is working with AJ Discala and others to control the price.

19 Now, there was a lot of discussion about, oh,
20 putting in a bid. Putting in a bid is not a deceptive act.
21 But talk to yourself, think to yourself: AJ Discala talked
22 about his box nonstop. He wanted the bids and the asks to not
23 be too far apart. He wanted the bids at all the different
24 market makers: Glendale, VFIN, NITE, CDEL. He wanted to see
25 bids in the price ranges where he thought the stock should be

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1 all sort of in the same area.

2 So, when he's telling someone put in a bid at this
3 price, don't worry, you won't get hit, what is he saying?
4 He's saying: I want it to look like someone wants to buy the
5 stock at that price and I want it to show up on the market
6 makers in the Level 2 so people can see that, so people can
7 see that there's interest in buying this stock at that price.

8 That is intended to deceive people into thinking
9 that there's more demand for the stock than there is.

10 And it does more than provide prove optics. What
11 happens when the price drops? What happens when the price
12 goes down to where the bid is? The bid gets hit and the
13 person ends up buying the stock at that price.

14 A bid is an offer to buy. If the price hits your
15 bid, you buy it. You heard that from Victor Azrak. You heard
16 many times he put in a bid -- he didn't want to buy the stock,
17 but he put in the bid, the bid got hit, and then he owned the
18 stock.

19 What does that do? That helps support the price.
20 That keeps the price from dropping too low so it can keep that
21 artificial control going.

22 Now, you've heard arguments about the press
23 releases. You heard Discala argue that press releases were
24 mostly true and if they were false not it's his fault because
25 he didn't write them. And Mr. Riopelle argued that Cane

SUMMATION - MS. JONES

3754

1 actually wasn't working to coordinate prereleases.

2 Now, why are press releases important? Press
3 releases are important because they suggest to the market
4 something is happening; something is happening that justifies
5 this price going up.

6 We issue a press release and then Discala would say:
7 This thing's gonna fly.

8 You need to have something to justify the price
9 walking up. Because if it's just going up, up, up, up, up,
10 and there's no news and nothing is happening, people say: Why
11 is this stock going up? What's going on that would justify
12 this price going up?

13 So, they'd work together. And Mr. Riopelle
14 suggested that Cane wasn't part of that, that she didn't
15 understand that, that she wasn't coordinating with him.

16 Well, let's take a look at Government Exhibit
17 198-41. They're talking about the press releases. And, yes,
18 the press releases were not as often as they wanted, they were
19 not -- Mr. Wexler and Mr. Discala were dissatisfied about how
20 often they were coming out. Kyleen Cane's fixing it, she's
21 getting a new press person onboard who is going to take care
22 of it.

23 And they talk about this. She tells them: Yeah,
24 we're working on it.

25 She's like: We're working on it. It's coming twice

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RPR

SUMMATION - MS. JONES

3755

1 a week. It's a lot more than you could possibly hope for.

2 And Discala is complaining: Twice a week is great,
3 but when did we get twice a week?

4 She says: Yeah, there's an announcement today. It
5 hasn't come out yet. There's another one coming out later in
6 the week.

7 She understands what's going on and she is working
8 with Discala and Wexler to make this happen.

9 Now, Mr. Riopelle argued that if a match trade
10 didn't happen every day, then somehow there's no evidence of
11 securities fraud.

12 That's a ridiculous argument. We have to show that
13 they conspired to commit securities fraud, that they conspired
14 to commit mail and wire fraud. We don't have to prove that
15 they actually did it, although in this case there is ample
16 evidence that they did it over and over and over again.

17 Ladies and gentlemen, I submit to you that you guys
18 can convict Mr. Discala and Ms. Cane based on the calls from
19 May 23 alone.

20 Because what do those calls show? Those calls show
21 that they are coordinating the stock price, working together,
22 and making it happen. That stock price jumps up.

23 Why does it jump up? Mr. Riopelle argued oh,
24 Ms. Cane had nothing to do with that, it just happened and she
25 was not responsible for that.

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SUMMATION - MS. JONES

3756

1 What did the calls show you? What did you hear?
2 You heard that the stock price jumped up because her broker,
3 her broker at Glendale, George Castillo, who had been
4 releasing the stock at a certain price at her direction was on
5 vacation. And because he was on vacation, the person who was
6 filling in was not selling, was not providing the supply that
7 was needed to keep the price at where they wanted it to be.

8 So what happens? The price spikes.

9 And this is bad. Everybody knows this is bad.
10 Because there's no explanation for the spike. It goes from
11 five something to up to seven.

12 Although Mr. Wexler is kind of like: Oh, maybe
13 we'll make some money. Maybe this is a good thing.

14 The people who understand what's going on, like
15 Ms. Cane and even Mr. Discala, they're like: Oh, this is not
16 good.

17 Mr. Discala said: This is going to ruin my box.
18 This is going to ruin my chart. It kills me that they did
19 this.

20 And Ms. Cane and Mr. Discala talk about it and
21 they're like: We've got to bring it down. We've got to bring
22 it down.

23 They're in agreement about this. They're in
24 agreement that this price, which they both know is fake from
25 the get-go, needs to come back down; not because that's the

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SUMMATION - MS. JONES

3757

1 real price, but it will make it look better, it will make the
2 chart look better.

3 So, they agree to do that and they work together to
4 make that happen. And it's not just Mr. Discala and Kyleen
5 Cane who are doing this. AJ Discala calls Darren Goodrich, he
6 calls Marc Wexler, he calls Victor Azrak. He has everybody
7 putting in bids and having Ms. Cane sell so they can get that
8 price down.

9 And where do they get it? They get it to \$6.30.

10 And what had Ms. Cane said where they wanted to
11 land? \$6.35.

12 Mr. Riopelle argues: They said 6.35. It ended at
13 6.30. That shows that there was no control, there was no
14 coordination.

15 That is ridiculous. They brought it back down.
16 They exercised that control.

17 And what did Mr. Discala tell Mr. Azrak later in the
18 same day? He said: You want to get it back down to \$6.35,
19 \$6.30, whatever.

20 It didn't matter. What matters is they worked
21 together and they brought it back down and did that together
22 because they both knew this looks bad. This is going to set
23 off alarms and we can't have that. We need to bring it back
24 down.

25 And they did. She did what she needed to do:

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SUMMATION - MS. JONES

3758

1 Called George Castillo, he started releasing the stock, the
2 price came down, and they got it basically where they wanted
3 it. That is control.

4 Now, there's also been arguments that it's
5 significant that there wasn't selling from the David
6 Ben-Bassat account on certain days.

7 First of all, we don't have to prove that they
8 committed stock fraud every single day from whenever it
9 started trading until the day they were arrested. What
10 matters is, were they working together to artificially control
11 the price? And you can see that they were based on what stock
12 price was doing. It never dropped down, it was up and up and
13 up and up, based on nothing other than market manipulation.

14 And how did Ms. Cane help keep that price up and
15 going up? She wasn't selling. She had most of the supply and
16 she was not releasing that stock and the price was not going
17 down and it was still going up and it was all part of the
18 coordinated effort.

19 There's also arguments that it was significant that
20 there were no -- there's no trading in the David Ben-Bassat
21 account after June 30.

22 Well, what do you know what's coming? What was
23 still yet to come? There were more tranches of stock coming.
24 You heard that. And you saw that in evidence.

25 On June 2, Cane Clark, Kyleen Cane's law firm, drops

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SUMMATION - MS. JONES

3759

1 off that Marche Godffrey Cubed stock certificate. You heard
2 from Marche Godffrey, he knew nothing about that stock
3 certificate. And they instructed the stock agent to transfer
4 that money -- that stock into an account at JPMorgan Chase
5 that they claimed was associated with Ostrich Technology
6 Partners, a company in Belize.

7 And it took some time for that to happen. That
8 transaction didn't actually occur until June 20. And then the
9 first trade that's associated with that account -- you heard
10 from the JP Morgan Chase representative the first trade in
11 that account was July 17.

12 They weren't done. She wasn't finished she was
13 moving on to the next traunch of stock.

14 Let's look at Government Exhibit 129-89, June 7.
15 This is between that broker who is identified as being Cayman
16 Maniac, and he's texting with Kyleen Cane in June; early June,
17 June 7. He's watching that stock: All that stock is creeping
18 up.

19 She writes back with a smiley face.

20 And he writes: You have a million shares, wasn't
21 it?

22 She says: The first deposit will be 270K but there
23 will be two more.

24 Okay. Great.

25 And what deposit is she talking about? I submit to

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SUMMATION - MS. JONES

3760

1 you she's talking about that deposit of those Marche Godffrey
2 shares that finally got deposited in JPMorgan Chase in a
3 foreign UK brokerage account on June 20 and then first
4 targeted the first trade on June 15. The first and only
5 trade.

6 Because what happened on July 17? Kyleen Cane was
7 arrested.

8 And what was also happening at that time? Well,
9 Kyleen Cane was getting her own free-trading shares. You saw
10 that in Government Exhibit 147-21. Cubed agreed to give
11 Kyleen Cane 300,000 free-trading shares of Cubed stock.

12 And in that board resolution, what did they value
13 that stock at? This was free-trading stock. This is supposed
14 to be free-trading stock that she was getting at the end of
15 June 2014. And what value did they put on that stock? \$1,
16 the same price that people who were investing in the private
17 placement paid.

18 But there was a big difference between Kyleen Cane's
19 300,000 shares and those restricted shares that people were
20 buying for a dollar a share: Those restricted shares were
21 going to be restricted for a year. Those people had to hold
22 on to that stock for a year before they could sell it.

23 So, they knew they were taking some risk that maybe
24 the stock wouldn't be worth \$5, \$6 in a year from now. Keep
25 in mind, they were not taking the risk that this was an

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SUMMATION - MS. JONES

3761

1 artificially inflated stock that was a complete fraud, they
2 just thought normal market conditions might mean that a year
3 from now this stock is not worth what it is.

4 But she's getting 300,000 shares of free-trading
5 stock the end of June and it's valued at \$1 per share. But
6 according to the stock mark, the stock market that Ms. Cane is
7 controlling, that stock is worth between \$6 and \$7 a share at
8 that time. So, she's paying herself, like, \$1.8 million in
9 stock if you believe that that stock price was a real price.
10 And it wasn't. She knew that. But that is what she was
11 telling the market and that is what she was putting in her
12 pocket.

13

14 (Continued on next page.)

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1 MS. JONES: Now, what happened to those stock
2 certificates, two days later she was arrested. Her markers
3 were restricted. She can't do anything with them.

4 You have heard arguments that the way that Kyleen
5 Cane held and sold stock was not to commitment fraud, but to
6 protect the company or to protect the investors. It is not
7 good for investors to have a stock price be artificially high.
8 The stock price is supposed to reflect the true demand for the
9 stock, based on the value of the company. Because if it
10 doesn't, sooner or later, it is going to come crashing down.

11 Deb Oremland from FINRA told you prices are supposed
12 to be set by normal market conditions of supply and demand,
13 and market manipulation is any sort of interference with
14 normal market conditions.

15 Jamie Sloan, she told you the stock price is
16 artificially high. That's not good because it is going to
17 come crashing down if it is not based on the value of the
18 company.

19 You are going to hear from the Judge that illegal
20 stock fraud includes techniques that are intended to mislead
21 investors by artificially affecting market activity. Here,
22 Cane and Discala worked together to set the price of Cubed so
23 it was not based on the real value of stock, but on
24 coordinated trading activity.

25 Motive alone is not enough to establish guilt, but

1 you can consider it. And you can use your own common sense.
2 It is clear here that AJ Discala and Kyleen Cane manipulated
3 the stock, and she had 7 million reasons to do so. She had
4 one million shares of restricted NPNC stock in her account,
5 plus 300,000 shares of free trading stock that she got from
6 Cubed.

7 Let's not also forget other ways she made money.
8 She made money from selling the shell. Mr. Riopelle made some
9 argument about how she advanced money to Cane through Cubed.
10 That's not what the evidence shows. The evidence shows that
11 Marc Wexler and AJ Discala wired her \$325,000 in February of
12 2014 to pay for the shell. And that makes sense. This is
13 what she does. She sells shells. She is not giving it away
14 for free.

15 So they paid her that 325. So, instantly, she's
16 made a profit off of what she had done with Northwest
17 Resources. And then she represents the company and is
18 participating in this scheme to control the stock price. And
19 why is this control important to everyone who invests in this
20 company? Let's take a moment and think about Rui Falcon. Rui
21 Falcon, who Mr. Discala thought was a wonderful witness for
22 himself, actually told you something very different about her
23 investment decisions. She told you she thought this company
24 had promise, she thought the technology was something that
25 maybe had potential. And she was willing to take that risk of

1 investing in that company and seeing if it could actually make
2 a profit. And how much money did she invest? She invested
3 over \$1.4 million of her own money and her investors.

4 And what was an important factor in her investment
5 decision, which is obvious and totally makes sense? She
6 considered that the stock was already trading at over 6
7 dollars a share. When you are making a decision to buy a
8 stock for a dollar a share, even if you have to hold it for a
9 year, the fact that it is already trading at over 6 dollars a
10 share makes you think, okay, this is a pretty good bet. I
11 think that this is going to be profitable, the company looks
12 okay, the stock price really suggests that there's some value
13 here. I am going to make that investment.

14 Does she know that Kyleen Cane controlled almost all
15 of the free trading shares and was leaking those shares out to
16 meet market demand? Of course not. She told you she didn't
17 know that. And would that have been important for her to
18 know? Absolutely. She said she would have run away screaming
19 and reported them to authorities.

20 And Ms. Cane and Cubed are not the only ones who
21 benefitted from that fraudulent high price, okay.

22 Let's talk about AJ Discala. AJ Discala makes, you
23 know, he had a lot of talk about how much money did he make,
24 and how much money did he lose. He made a lot of money in
25 ITEN, in CodeSmart. Even his own accountant came in and said

1 she thought he made \$1.8 million. And that's not including
2 the \$600,000 that Marlene Goepel made in her account because,
3 as she said, she was told that was not his. That's not what
4 Marlene Goepel told you, that's not what common sense would
5 tell you.

6 So he made over \$2 million on ITEN. StarStream,
7 kind of a bust. The Staffing Group didn't really work out
8 because they couldn't exercise that control. They didn't have
9 Matt Bell any more to stuff his clients full of CodeSmart
10 stock because he got fired. That stock crashed, his other
11 stock that he was playing around with crashed, and he lost his
12 clients a lot of money, and he was out.

13 So he could not provide that artificial demand for
14 that stock to walk the price up. They didn't have that for
15 the Staffing Group, they didn't have that for StarStream. So
16 what happened with those stocks? The attempt, and it was an
17 attempt, they wanted to manipulate that stock. They wanted to
18 get that price up. But they couldn't do it because they
19 didn't have the means to do it.

20 So Ms. Cane comes along and she provides them with
21 the ability and the method to get that stock price up over
22 five dollars. Without her, that stock price may not have been
23 that high, it would not have moved that far up, and it would
24 not have been able to exercise the level of control that they
25 did over that price.

1 And what was Mr. Discala able to do based on that
2 stock price, Mr. Discala and Mr. Wexler? He goes running
3 around selling stock purchase agreements or participation
4 purchase agreements in that 8 million shares that Kyleen Cane
5 held. You heard that from his own accountant. His own
6 accountant had prepared this draft schedule that she's like,
7 oh, it is not done, it is just a draft. But that draft
8 schedule showed that AJ Discala had \$1.7 million deposited
9 into the OmniView account from people like Bryan Hagen and
10 Michael Kellner, and Igor Gefter, who thought they were buying
11 Cubed shares. That they were buying, I don't know what. But
12 they sent him \$1.7 million because they could see the stock is
13 trading between 5 dollars, 6 dollars, 7 dollars. It looks
14 like a good value to buy it at a dollar, because that's what
15 he was doing. Mr. Discala was selling interest in those
16 shares that she was holding at a dollar a share, and taking in
17 another \$1.7 million.

18 This is stock fraud. The defendants have tried to
19 argue that they are the victims here, that Kyleen Cane was
20 deceived by her associate Joe Laxague, if, in fact, he's the
21 one who did this and these people aren't lying about how they
22 came to be fake Northwest Resources shareholders.

23 Remember, she worked at a four person law firm.
24 What's that law firm called? Cane Clark. Where is that law
25 firm located? Las Vegas. Where are all those fake

1 shareholders located? Las Vegas. Taylor Edgarton was in
2 Reno. He says Joe Laxague flew down, met with him, had him
3 sign those papers, and at some point later in time, Joe
4 Laxague was based in Reno, but everything else was based in
5 Las Vegas. Cane Clark was based in Las Vegas.

6 You saw the text messages between Kyleen Cane and
7 Joe Laxague. She told him what to do. She told him what that
8 shell was worth. And he reported to her. It is her law firm.
9 And she's the one who got the money when the shell was sold.
10 That was the provident to the Cane Clark law firm. She's the
11 one that signed the checks to Taylor Edgarton, and she signed
12 that \$10,000 check to Wesley Smith, who helped find the fake
13 shareholders when this company went public with Cubed. Wesley
14 Smith had no direct connection to this company. The only
15 thing Wesley Smith did was he rounded up those fake
16 shareholders, and she paid him \$10,000 at the same time that
17 Taylor Edgarton got his \$20,000.

18 She knew exactly what was going on. But she wants
19 to argue that somehow she's the victim here.

20 Same thing with Discala. He's completely surrounded
21 by fraudsters, serial liars, all of them.

22 Are these the two unluckiest people in the world, or
23 are they leading a stock price conspiracy? Common sense tells
24 you that these two knew exactly what was going on, and that
25 the facts are as they have been presented to you in this case,

1 through all the evidence and all the witness and all the
2 documents.

3 The securities laws at issue here are not about
4 protecting companies or protecting a stock price. They are
5 about protecting people from fraud. The real victims here are
6 people who bought those stocks at artificially high prices
7 that were not based on reality. Like all the Bell clients who
8 got stuffed with CodeSmart, and the Halcyon clients who were
9 stuck with CodeSmart and Staffing Group and StarStream and
10 Cubed. And people like Stephanie Conti, who bought CodeSmart
11 stock on the open market. And let's not forget the people who
12 gave money to Discala to participate in escrow, like Igor
13 Gefter, the doctor, and Eliezer Zupnick and Bryan Hagen and
14 Michael Kellner.

15 Discala made millions of dollars from CodeSmart and
16 Cubed, the Cubed scheme. Millions of dollars that came
17 directly out of the pockets of the defrauded investors. And
18 please don't forget, Discala cannot do this alone. And with
19 respect to Cubed, he was only able to commit this fraud thanks
20 to Kyleen Cane who set up the secret undisclosed escrow and
21 tightly controlled the price so it would walk up from five
22 dollars to over six when they were all arrested.

23 Ladies and gentlemen, we ask you to hold Abraxas
24 Discala and Kyleen Cane accountable for the crimes that they
25 committed. Find them guilty because the evidence has shown

PROCEEDINGS

3769

1 beyond a reasonable doubt that they are guilty. Thank you.

2 THE COURT: Thank you, Ms. Jones.

3 Ladies and gentlemen, that brings us to the end of
4 the argument. It does not mean the case is over. You have
5 not yet heard the Court's instructions on the law. So when we
6 take our lunch break, the usual rules apply. And, that is,
7 don't discuss the case amongst yourselves or with anyone else,
8 and continue to keep an open mind since you will -- again, you
9 won't be going out, you will be here in the jury room, but
10 don't use the opportunity of the hour break that we will take
11 to do any research, electronic or otherwise. And to the
12 extent that you may be on some social media platform or some
13 other form of communication, you are to remain on radio
14 silence.

15 So we will see you in about between 45 minutes to an
16 hour, and we will hear the Court's instructions on the law.

17 (WHEREUPON, at 2:02 p.m., the jury exited the
18 courtroom.)

19 (Open court; no jury present.)

20 THE COURT: We will try to get back between 2:45 and
21 3:00, and we will start as close to 3:00 as we can.
22 Otherwise, the usual rules. If you need it, take it. If you
23 don't, we'll lock it up.

24 (WHEREUPON, a recess was had from 2:02 p.m. to
25 3:00 p.m.)

JURY CHARGE

3770

1 THE COURTROOM DEPUTY: Court is back in session.
2 Counsel for both sides are present, including defendants.

3 THE COURT: Are we ready for the jury?

4 MS. JONES: Yes, Your Honor.

5 MR. BOWMAN: Your Honor, the only thing that I
6 wanted to raise earlier, and it is just a very brief matter,
7 and I discussed it with the government. I had a question
8 about paragraph 13 of the indictment, which charged the
9 schedule 13D issue, and I understand it is not in your charge,
10 so.

11 THE COURT: Right.

12 MR. BOWMAN: Thank you.

13 (WHEREUPON, at 3:14 p.m., the jury re-entered the
14 courtroom.)

15 THE COURT: Be seated, please.

16 Counsel will stipulate that the jury is present and
17 properly seated.

18 MS. JONES: Yes, Your Honor.

19 MR. BOWMAN: Agreed.

20 MR. RIOPELLE: Agreed.

21 THE COURT: Thank you, Counsel.

22 All right. Ladies and gentlemen, as you know from
23 what I have told you already, and counsel referred to it
24 during the cross of some of their closing arguments, the next
25 and last building block before deliberation is the

JURY CHARGE

3771

1 instructions of the Court on the law that you must apply to
2 the case.

3 I have prepared those instructions for you, and I am
4 going to have my deputy clerk of court and law clerk Benjamin
5 Mejia read them to you. I want you to pay careful attention
6 to them.

7 Mr. Mejia.

8 THE LAW CLERK: Members of the jury, now that they
9 the evidence in this case has been presented, and the
10 attorneys for the government and each defendant has concluded
11 their closing arguments, it is my responsibility to instruct
12 you as to the law that governs this case. Before I do so, I
13 want to thank you for your patience and cooperation.

14 My instructions will be in three parts. First, I
15 will instruct you regarding the general rules that define and
16 govern the duties of a jury in a criminal case. Second, I
17 will instruct you as to the legal elements of the crimes
18 charged in the indictment, that is, the specific elements that
19 the government must prove beyond a reasonable doubt to warrant
20 a finding of guilt, and, third, I will give you some general
21 rules regarding your deliberations.

22 You have heard now all of the evidence in the case,
23 as well as the final arguments of the lawyers for the parties.
24 It is your duty to find the facts from all the evidence in
25 this case. You are the sole judges of the facts, and it is,

JURY CHARGE

3772

1 therefore, for you and you alone to pass upon the weight of
2 the evidence; to resolve such conflicts as may have appeared
3 in the evidence; and to draw such inferences as you deem to be
4 reasonable and warranted from the evidence or lack of evidence
5 in this case.

6 With respect to any question concerning the facts,
7 it is your recollection of the evidence that controls. To the
8 facts as you find them, you must apply the law in accordance
9 with my instructions. While the lawyers may have commented on
10 some of these legal rules, you must be guided only by what I
11 instruct you about them. You must follow all the rules as I
12 explain them to you. You may not follow some and ignore
13 others; even if you disagree with or do not understand the
14 reasons for some of the rules, you are bound to follow them.

15 I express no view whether a defendant is guilty or
16 not guilty or as to any fact. You should not draw any
17 inference or reach any conclusion as to whether a defendant is
18 guilty or not guilty from anything I may have said or done.
19 You will decide the case solely on the facts you find and the
20 law as I give it to you.

21 In reaching your verdict, you are to perform the
22 duty of finding the facts without bias or prejudice as to any
23 party. You must remember that all parties stand equal before
24 a jury in the courts of the United States. The fact that the
25 government is a party and the prosecution is brought in the

JURY CHARGE

3773

1 name of the United States does not entitle the government or
2 its witnesses to any greater consideration than that accorded
3 to any other party. By the same token, you must give it no
4 less consideration. Your verdict must be based solely on the
5 evidence or lack of evidence.

6 For the same reasons, the personalities and the
7 conduct of counsel are not in any way in issue. If you formed
8 reactions of any kind to any of the lawyers in this case,
9 favorable or unfavorable, whether you approved or disapproved
10 of their behavior, those reactions must not enter into your
11 deliberations.

12 During the course of the trial, I may have
13 admonished an attorney. You should draw no inference against
14 the attorney or the client. It is the duty of the attorneys
15 to offer evidence and press objections on behalf of their
16 side. It is my function to cut off counsel from an improper
17 line of argument or questioning and to strike answers when I
18 think it is necessary. But you should draw no inference from
19 that.

20 The indictment that was filed against the defendants
21 is the means by which the government gives the defendants
22 notice of the charges against them and brings them before the
23 court. The indictment is an accusation and nothing more. The
24 indictment is not evidence, and you are to give it no weight
25 in arriving at your verdict.

JURY CHARGE

3774

1 The defendants, in response to the indictment,
2 pleaded not guilty. A defendant is presumed to be innocent
3 unless his or her guilt has been proven beyond a reasonable
4 doubt, and that presumption alone, unless overcome, is
5 sufficient to acquit him or her. Each defendant is on trial
6 for the crimes charged against him and her in the indictment
7 and not for anything else.

8 The government has the burden, that is, the
9 obligation, of proving guilt beyond a reasonable doubt. This
10 burden never shifts to a defendant. A defendant does not have
11 to prove his or her innocence; he or she need not submit any
12 evidence at all.

13 Since in order to convict a defendant of a given
14 charge, the government is required to prove that charge beyond
15 a reasonable doubt, the question then is, what is reasonable
16 doubt? The words almost define themselves. It is a doubt
17 based upon reason. It is a doubt that a reasonable person has
18 after carefully weighing all of the evidence or lack of
19 evidence. It is a doubt that would cause a reasonable person
20 to hesitate, to act in a matter of importance in his or her
21 personal life.

22 Proof beyond a reasonable doubt must therefore be
23 proof of a convincing character that a reasonable person would
24 not hesitate to rely upon in making an important decision. A
25 reasonable doubt is not caprice or whim. It is not

JURY CHARGE

3775

1 speculation or suspicion. It is not an excuse to avoid the
2 performance of an unpleasant duty. The law does not require
3 that the government prove guilt beyond all possible doubt.
4 Proof beyond a reasonable doubt is sufficient to convict.

5 If, after fair and impartial consideration of the
6 evidence, you have a reasonable doubt as to a defendant's
7 guilt with respect to a particular charge against him or her,
8 you must find that defendant not guilty of that charge. On
9 the other hand, if after a fair and impartial consideration of
10 all the evidence you are satisfied beyond a reasonable doubt
11 of a defendant's guilt with respect to a particular charge
12 against him or her, you should find that defendant guilty of
13 that charge.

14 I wish now to expand on the instructions I gave you
15 at the beginning of the trial as to what is evidence and how
16 you should consider it. Evidence comes in several forms,
17 including sworn testimony of witnesses, both on direct and
18 cross-examination, and regardless of who called the witness,
19 exhibits that have been received in evidence by the court, and
20 facts to which all the lawyers have agreed or stipulated.

21 The parties have stipulated to certain facts in this
22 case. Such a stipulation is an agreement among the parties
23 that a certain fact is true. You must consider such
24 stipulated facts as true.

25 Certain things are not evidence and are to be

JURY CHARGE

3776

1 disregarded by you in deciding what the facts are. They are
2 as follows. First, arguments or statements by lawyers are not
3 evidence. Questions put to the witnesses are not evidence.
4 It is the question combined with the answer that is evidence.

5 In addition to the lawyer's questions, I
6 occasionally may have asked questions for purposes of
7 clarification. Please do not assume that the questions are
8 evidence or that I hold any opinion on the matters to which
9 any question may have related. I do not. Those questions
10 were asked solely in an effort or attempt to make something
11 clearer. Similarly, objections to questions or to offered
12 exhibits are not evidence. In this regard, attorneys have a
13 duty to their clients to object when they believe evidence
14 should not be received. You should not be influenced by the
15 objection or by the Court's ruling on it. If the objection
16 was sustained, ignore the question. If the objection was
17 overruled, treat the answer like any other answer. Of course,
18 testimony that has been stricken or that you have been
19 instructed to disregard is not evidence and must be
20 disregarded. Equally obvious, anything you may have seen or
21 heard outside the courtroom is not evidence.

22 Finally, it would be improper for you to consider,
23 in reaching your decision, as to whether the government
24 sustained its burden of proof, any personal feelings you may
25 have about a defendant's race, religion, national origin,

JURY CHARGE

3777

1 ethnic background, sex, gender orientation, or age. All
2 persons are entitled to the presumption of innocence, and the
3 government has the same burden of proof. In addition, it
4 would be equally improper for you to allow any feelings you
5 might have about the government or the United States, or the
6 nature of the crimes charged, to interfere with your decision
7 making process. To repeat, your verdict must be based
8 exclusively upon the evidence or the lack of evidence in this
9 the case.

10 The government has offered evidence in the form of
11 recordings of telephone calls and transmitted text messages
12 involving the defendants. Some of those were obtained without
13 the knowledge of the parties to these communications, but with
14 the consent and authorization of the Court of the Eastern
15 District of New York. These so-called wire taps were lawfully
16 obtained. The use of this procedure to gather evidence is
17 perfectly lawful and the government has the right to use such
18 wiretaps in this case.

19 With respect to these recordings, the government was
20 permitted to provide transcripts containing its interpretation
21 of what was said on English language recordings that were
22 received into evidence. The transcripts were provided to you
23 as aids or guides to assist you in listening to the
24 recordings. However, they are not, in and of themselves,
25 evidence. They were not admitted into evidence. The

JURY CHARGE

3778

1 recordings are the primary and best source of evidence.

2 When the recordings were played, I advised you to
3 listen to very carefully to the recordings themselves. For
4 recordings in English, you should make your own interpretation
5 of what appears on the recording based on what you heard.

6 If you think you heard something differently than
7 the way it appeared on the transcript, what you heard is
8 controlling. You, the jury, are the sole judges of the facts.

9 Some of the exhibits that were admitted into
10 evidence were in the form of charts and summaries. I decided
11 to admit these charts and summaries in place of and, at times,
12 along with the underlying documents that they represent in
13 order to save time and avoid unnecessary inconvenience. You
14 should consider these charts and summaries as you would any
15 other evidence.

16 I told you that evidence comes in various forms,
17 such as the sworn testimony of witnesses, exhibits, and
18 stipulations. There are, in addition, different kinds of
19 evidence, direct and circumstantial.

20 Direct evidence is the communication of a fact by a
21 witness, who testified to the knowledge of that fact as having
22 been obtained through one of the five senses. So, for
23 example, a witness who testified to knowledge of a fact
24 because she or he saw it, heard it, smelled it, tasted it, or
25 touched it, is giving evidence, which is direct. What remains

JURY CHARGE

3779

1 is your responsibility to pass upon the credibility of the
2 testimony that witness gave.

3 Circumstantial evidence is evidence which tends to
4 prove a fact in issue by proof of other facts from which the
5 fact in issue may be inferred.

6 The word "infer," or the express to draw an
7 inference, means to find that a fact exists from proof of
8 another fact. For example, if a fact in issue is whether it
9 is raining at the moment, none of us can testify directly to
10 that fact sitting as we are in what is essentially a
11 windowless courtroom. Assume, however, that as we are sitting
12 here, a person walks into the courtroom, wearing a raincoat
13 that is dripping wet and carrying an umbrella that is dripping
14 water. We may infer from those facts that it is raining
15 outside. In other words, the fact of rain is an inference
16 that could be drawn from the wet raincoat and the dripping
17 umbrella. However, from the direct evidence of your
18 observation of a person entering the courtroom wearing a wet
19 raincoat and carrying a wet umbrella alone, you could not
20 infer exactly when the rain had started or for how long it had
21 rained.

22 An inference is to be drawn only if it is logical
23 and reasonable to do so. In deciding whether to draw an
24 inference, you must look at and consider all the facts in the
25 light of reason, common sense, and experience. Whether a

JURY CHARGE

3780

1 given inference is or is not to be drawn is entirely a matter
2 for you, the jury, to decide. Please bear in mind, however,
3 that an inference is not to be drawn by guesswork or
4 speculation.

5 I remind you once again that you may not convict a
6 defendant unless you are satisfied of his or her guilt beyond
7 a reasonable doubt, whether based on direct evidence,
8 circumstantial evidence, or the logical inferences to be drawn
9 from such evidence.

10 Circumstantial evidence does not necessarily prove
11 less than direct evidence, nor does it necessarily prove more.
12 You are to consider all the evidence in the case, direct and
13 circumstantial, in determining what the facts are and in
14 arriving at your verdict.

15 I will now instruct you further about inferences.
16 During the trial, you may have heard the attorneys use the
17 term "inference," and in their arguments they may have asked
18 you to infer on the basis of your reason, experience, and
19 common sense, from one or more proven facts, the existence of
20 some other facts.

21 An inference is not a suspicion or guess, it's a
22 logical conclusion that a disputed fact exists that we reach
23 in light of another fact, which has been shown to exist.
24 There are times when different inferences may be drawn from
25 facts, whether proved by direct or circumstantial evidence.

JURY CHARGE

3781

1 It is for you, and you alone, to decide what inferences you
2 will draw. Keep in mind that the mere existence of an
3 inference against a defendant does not relieve the government
4 of the burden of establishing its case beyond a reasonable
5 doubt.

6 In considering inferences, keep in mind that you may
7 not infer that a defendant is guilty of criminal conduct
8 merely from the fact that he or she associated with other
9 people who were guilty of wrongdoing, or that he or she was
10 present at the time that criminal conduct was being committed,
11 or that he or she had knowledge that it was being committed.

12 The fact that one side or the other called more
13 witnesses or introduced more evidence does not mean that you
14 should find the facts in favor of the side who called more
15 witnesses. You must not permit the number of witnesses or
16 documents supplied, or the amount of time taken in examining a
17 witness, to overwhelm your judgment. The weight of the
18 evidence is by no means determined by the number of witnesses
19 or the length of their testimony or the quantity of documents.
20 You must keep in mind that the burden of proof is always on
21 the government, and a defendant is not required to call any
22 witness or offer any evidence because a defendant is presumed
23 to be innocent.

24 By the same taken, you do not have to accept the
25 testimony of any witness who has not been contradicted or

JURY CHARGE

3782

1 impeached, if you find the witness not to be credible.

2 You also have to decide which witnesses to believe
3 and which facts are true. To do this, you must look at all
4 the evidence, drawing upon your own common sense and personal
5 experience. But, again, you must keep in mind that the burden
6 of proof is always on the government and a defendant is not
7 required to call any witnesses or offer any evidence because
8 he or she are presumed to be innocent.

9 The law does not require any party to call as
10 witnesses all persons who may have been present at any time or
11 place involved in the case, or who may appear to have some
12 knowledge of the matter at issue in this trial. Nor does the
13 law require any party to produce as exhibits all papers and
14 things mentioned during the course of the trial. And, of
15 course, a defendant in a criminal case is not required to call
16 any witnesses or produce any evidence at all.

17 During the course of trial, you heard testimony that
18 attorneys interviewed witnesses when preparing for and during
19 the trial. You must not draw any unfavorable inference from
20 that fact. On the contrary, attorneys are obliged to prepare
21 their case as thoroughly as possible, and in the discharge of
22 that responsibility, properly interview witnesses in
23 preparation for the trial and from time to time as may be
24 required during the course of trial.

25 During the trial you may have heard testimony of

JURY CHARGE

3783

1 witnesses and argument by counsel that the government did not
2 utilize specific investigative techniques or exhaustively
3 pursued every piece of information. You may consider these
4 facts in deciding whether the government has met its burden of
5 proof, because, as I told you, you should look at all of the
6 evidence or lack of evidence in deciding whether the
7 government has proven a particular charge beyond a reasonable
8 doubt.

9 However, you are also instructed that there is no
10 legal requirement that the government use any specific
11 investigative techniques or pursue every investigative lead to
12 prove its case. Law enforcement techniques are not your
13 concern. Your concern is to determine whether or not, based
14 upon all the evidence presented in the case, the government
15 has proven that the defendant is guilty beyond a reasonable
16 doubt.

17 In addition to the evidence about the involvement of
18 cooperating accomplices, who testified at trial, evidence has
19 also been introduced as to the involvement of certain other
20 individuals in the crimes charged in the indictment. You may
21 not draw any inference, favorable or unfavorable, toward the
22 government or the defendants on trial from the fact that
23 certain persons were not named as defendants in this
24 indictment. You should draw no inference from the fact that
25 any other person is not present at this trial. Your concern

JURY CHARGE

3784

1 is solely the defendants on trial before you. That other
2 individuals are not on trial before you is not a matter of
3 concern to you. You should not speculate as to the reasons
4 these individuals are not on trial before you. The fact that
5 these individuals are not on trial before you should not
6 control or influence your verdict with reference to the
7 defendants who are on trial. You must only consider whether
8 the government has proved beyond a reasonable doubt that
9 either of the defendants is guilty of a crime. The fact that
10 these individuals are not on trial before you should not
11 control or influence in any way your verdict with reference to
12 either of the defendants.

13 In deciding what the facts are, you must decide
14 which testimony to believe and which testimony not to believe.
15 In making that decision, you should use the same reason you
16 would employ in making determinations important in your own
17 affairs that are based on information given to you by others.
18 There are a number of factors you may take into account in
19 determining whether the testimony of a witness is believable,
20 including the following.

21 Did the witness impress you as honest? Did the
22 witness have any particular reason not to tell the truth? Did
23 the witness have a personal interest in the outcome of the
24 case? Did the witness seem to have a good memory? Did the
25 witness have the opportunity and ability to observe accurately

JURY CHARGE

3785

1 the things he testified about? Did the witness appear to
2 understand the questions clearly and answer them directly?
3 Did the witness' testimony differ from the testimony of other
4 witnesses? People sometimes forget things. A contradiction
5 may be an innocent lapse of memory, or it may be an
6 intentional falsehood. Consider, therefore, whether the
7 contradiction, if there was one, has to do with an important
8 fact or only a small detail.

9 Different people observing an event may remember it
10 differently, and, therefore, testify about it differently.
11 But if any witness is shown to have willfully lied about any
12 material matter, you have the right to conclude that the
13 witness also lied about other matters. You may either
14 disregard all of that witness' testimony or you may accept
15 whatever part of it you think deserves to be believed.

16 You may consider the factors I have just discussed
17 with you in deciding how much weight to give to testimony.

18 You have heard from witnesses who each testified
19 that they were actually involved in planning and carrying out
20 the crimes charged in the indictment. Indeed, it is the law
21 in federal courts that the testimony of an accomplice may be
22 enough in itself for conviction, if the jury finds that the
23 testimony is credible and establishes guilt beyond a
24 reasonable doubt. However, it is also the case that
25 accomplice testimony is of such nature that it must be

JURY CHARGE

3786

1 scrutinized with great care and viewed with particular caution
2 when you decide how much of that testimony to believe.

3 I have given you some general consideration on
4 credibility, and I will not repeat them all here. Nor will I
5 repeat all of the arguments made on both sides. However, let
6 me say a few things that you may want to consider during your
7 deliberations on the subject of accomplices.

8 You should ask yourself whether any of these
9 so-called accomplices would benefit more by lying or by
10 telling the truth. Was the testimony of any made up in any
11 way because he or she believed or hoped that he or she would
12 somehow receive favorable treatment by testifying falsely, or
13 did any believe that his or her interests would be best served
14 by testifying truthfully?

15 If you believe that any of the witnesses was
16 motivated by hopes of personal gain, was the motivation one
17 which would cause him or her to lie, or was it one which would
18 cause him or her to tell the truth? Did this motivation color
19 his or her testimony? In sum, you should look at all of the
20 evidence in deciding what credence and what weight, if any,
21 you will want to give to any of the cooperating accomplice
22 witnesses.

23 Finally, the cooperating witnesses have pled guilty
24 to charges arising out of the same facts as this case. You
25 are instructed that you are to draw no conclusions or

JURY CHARGE

3787

1 inferences of any kind about the guilt of a defendant on trial
2 from the fact that a prosecution witness pled guilty to
3 similar charges. That witness' decision to plead guilty was a
4 personal decision about his or her own guilt. The fact that a
5 cooperating witness pleaded guilty may not be used by you in
6 any way as evidence against or unfavorable to a defendant on
7 trial here.

8 As you were informed during the trial, some of the
9 testimony before you came from witnesses who were assured by
10 the government that, in exchange for testifying truthfully,
11 completely, and fully, they would not be prosecuted for any
12 crimes that they may have admitted to the government or here
13 in court.

14 Like the testimony of cooperating witnesses, the
15 testimony of a witness who has been promised that he will not
16 be prosecuted should be examined by you with greater care than
17 the testimony of an ordinary witness. You should scrutinize
18 it closely to determine whether or not it is colored in such a
19 way as to place guilt upon the defendant in order to further
20 the witness' own interest.

21 You must consider whether such a witness was
22 motivated to make up testimony in the hope or belief that such
23 was more likely to ensure the witness' own freedom from
24 prosecution. Or, ask yourselves, did the witness believe his
25 interests would be best served by testifying truthfully? It

JURY CHARGE

3788

1 is for you to decide, based on your own perceptions and common
2 sense, to what extent, if at all, the witness' interest has
3 affected or colored his testimony. You should carefully
4 scrutinize all the evidence in deciding whether you believe an
5 immunized witness and what weight, if any, his testimony
6 deserves.

7 During this trial, you have heard evidence that on
8 other occasions a defendant engaged in conduct that was
9 similar in nature to the conduct charged in the indictment.
10 Evidence of prior similar acts was admitted as background
11 evidence to show the development of relationships of trust
12 between a defendant and the government's witnesses and to
13 provide back ground evidence of the charged crimes. In
14 addition, if you determine that a defendant committed the acts
15 charged in the indictment, and the similar acts as well, then
16 you may, but need not, draw an inference that in doing the
17 acts charged in the indictment, a defendant acted knowingly
18 and intentionally and not because of some mistake, accident,
19 carelessness, or other innocent reasons.

20 However, a defendant is on trial only for committing
21 the acts alleged in the indictment. You may not consider
22 evidence of any similar acts as a substitute for proof that
23 any defendant committed the crimes charged in this case. Nor
24 may you consider evidence as proof that any defendant has a
25 criminal propensity or bad character. The evidence of other

JURY CHARGE

3789

1 similar acts was admitted for limited purposes, and you may
2 consider it only for those limited purposes.

3 The defendants called witnesses who gave their
4 opinions of the defendant's good character. This testimony is
5 not to be taken by you as the witness' opinion as to whether
6 any defendant is guilty or not guilty. That question is for
7 you alone to determine. You should, however, consider this
8 character evidence together with all the other facts and all
9 the other evidence in the case in determining whether a
10 defendant is guilty or not guilty of the charges.

11 Such character or reputation evidence alone may
12 indicate to you that it is improbable that is person of such
13 character or reputation would commit the offense charged.
14 Accordingly, if after considering all the evidence, including
15 testimony about a defendant's good character, you find a
16 reasonable doubt has been created, you must acquit him or her
17 of all the charges. On the other hand, if after considering
18 all the evidence, including that of a defendant's character,
19 you are satisfied beyond a reasonable doubt that any defendant
20 is guilty, you must not acquit him or her merely because you
21 believe him or her to be a person of good character.

22 One of the defendants did not testify in this case.
23 Under our constitution, the defendants have no obligation to
24 testify or to present any other evidence because it is the
25 prosecution's burden to prove a defendant guilty beyond a

JURY CHARGE

3790

1 reasonable doubt. That burden remains with the prosecution
2 throughout the entire trial and never shifts to a defendant.
3 A defendant is never required to prove that he or she is
4 innocent.

5 You may not attach any significance to the fact that
6 a defendant did not testify. No adverse inference against her
7 may be drawn against you because she did not take the witness
8 stand. You may not consider that against that defendant in
9 any way in your deliberations in the jury room.

10 In a criminal case, the defendant cannot be required
11 to testify, but if the defendant chooses to testify, he is, of
12 course, permitted to take the witness stand on his own behalf.
13 In this case, a defendant decided to testify. You should
14 examine and evaluate the defendant's testimony just as you
15 would the testimony of any witness with an interest in the
16 outcome of this case. You should not disregard or disbelieve
17 the defendant's testimony simply because he is charged as the
18 defendant in this case.

19 In this case, I have permitted a witness, Deborah
20 Oremland, to express opinions about certain matters that are
21 in issue. A witness may be permitted to testify to an opinion
22 on those matters about which she has special knowledge, skill,
23 experience, and training. Such testimony is presented to you
24 on the theory that someone who is experienced and
25 knowledgeable in the field can assist you in understanding the

JURY CHARGE

3791

1 evidence or in reaching an independent decision on the facts.

2 In weighing this opinion testimony, you may consider
3 the witness' qualifications, opinions, the reasons for
4 testifying, as well as all of the other considerations that
5 ordinarily apply when you are deciding whether or not to
6 believe a witness' testimony. You may give the opinion
7 whatever weight, if any, you find it deserves in light of all
8 the evidence in this case. You should not, however, accept
9 opinion testimony merely because I allowed these witnesses to
10 testify concerning that opinion. Nor should you substitute it
11 for your own reason, judgment, and common sense. The
12 determination of the facts in this case rest solely with you.

13 During this trial, you have heard the testimony of
14 active law enforcement employees. The fact that a witness is
15 a law enforcement employee does not mean that his or her
16 testimony is entitled to any greater weight. By the same
17 token, the testimony of such a witness is not entitled to less
18 consideration for that reason.

19 At the same time, it is quite legitimate for defense
20 counsel to try to attack the credibility of a law enforcement
21 witness on the grounds that his or her testimony may be
22 colored by a personal or professional interest in the outcome
23 of the case.

24 You should consider the testimony of a law
25 enforcement employee just as you would any other evidence in

JURY CHARGE

3792

1 the case and evaluate his or her credibility just as you would
2 that of any other witness. After reviewing all the evidence,
3 you will decide whether to accept the testimony of a law
4 enforcement employee, and what weight, if any, that testimony
5 deserves.

6 You have heard evidence that a witness made a
7 statement on an earlier occasion which counsel argues is
8 inconsistent with the witness' trial testimony. Evidence of
9 what is arguably a prior inconsistent statement was placed
10 before you for the limited purpose of helping you decide
11 whether to believe the trial testimony of the witness who
12 contracted himself or herself. If you find that the witness
13 made an earlier statement that conflicts with his or her trial
14 testimony, you may consider that fact in deciding how much of
15 his or her trial testimony, if any, to believe.

16 In making this determination, you may consider
17 whether the witness purposely made a false statement or
18 whether it was an innocent mistake; whether the inconsistency
19 concerns an important fact, or whether it had to do with a
20 small detail; whether the witness had an explanation for the
21 inconsistency, and whether that explanation appealed to your
22 common sense.

23 It is exclusively your duty, based upon all the
24 evidence and your own good judgment to determine whether the
25 prior statement was inconsistent, and, if so, how much, if

JURY CHARGE

3793

1 any, weight should be given to the inconsistent statement in
2 determining whether to believe all, part, or none of the
3 witness' testimony.

4 I will now turn to the second part of this charge,
5 and will, as I indicated at the outset, instruct you as to the
6 specific elements of the crimes charged that the government
7 must prove beyond a reasonable doubt to warrant findings of
8 guilt in this case.

9 The defendants are formally charged in an
10 indictment. As I instructed you at the beginning of this
11 case, an indictment is a charge or accusation. The indictment
12 in this case contains a total of ten counts.

13 There are two defendants on trial before you. You
14 must, as a matter of law, consider each defendant -- each
15 count of the indictment and each defendant's involvement in
16 that count separately, and you must return a separate verdict
17 on each defendant for each count on which he or she is
18 charged.

19 In reaching your verdict, bear in mind that guilt is
20 personal and individual. Your verdict of guilty or not guilty
21 must be based solely upon the evidence about each defendant.
22 The case against each defendant on each count stands or falls
23 upon the proof or lack of proof against that defendant alone,
24 and your verdict as to any defendant on any count should not
25 control your decision as to any other defendant or any other

JURY CHARGE

3794

1 count. No other considerations are proper.

2 The indictment charges three counts as to both
3 defendants. One count of conspiracy to commit securities
4 fraud, one count of conspiracy to submit mail and wire fraud,
5 and one count of securities fraud. In addition, the
6 indictment charges Abraxas Discala with one count of
7 securities fraud and six counts of wire fraud.

8 The indictment charges on or about certain dates.
9 It does not matter if the indictment charges that a specific
10 act occurred on or about a certain date, and the evidence
11 indicates that, in fact, it was on another date. The law only
12 requires substantial similarity between the dates alleged in
13 the indictment and the date established by testimony or
14 exhibits.

15 One or more counts of the indictment may accuse the
16 defendant of violating the same statute in more than one way.
17 In other words, the indictment may allege that the statute in
18 question was violated by various acts, which are in the
19 indictment joined by the conjunctive "and," while the statute
20 and the elements of the offense are stated in the disjunctive,
21 using the word "or." In these instances, it is sufficient for
22 a finding of guilt if the evidence established beyond a
23 reasonable doubt the violation of the statute by any one of
24 the acts charged.

25 During these instructions on the elements of the

JURY CHARGE

3795

1 crimes charged, you will hear me use the words "knowingly" and
2 "intentionally" from time. Before you can find a defendant
3 guilty, you must be satisfied that the defendant was acting
4 knowingly and intentionally.

5 A person acts knowingly if he or she acts
6 intentionally and voluntarily, and not because of ignorance,
7 mistake, accident, or carelessness. Whether a defendant acted
8 knowingly may be proven by his or her conduct and by all of
9 the facts and circumstances surrounding the case.

10 A person acts intentionally if he or she acts
11 deliberately and purposely. That is, the acts must have been
12 the product of his or her conscious objective decision rather
13 than the product of a mistake or accident.

14 These issues of knowledge and intent require you to
15 make a determination about a defendant's state of mind,
16 something that can rarely be proved indirectly. A wise and
17 careful consideration of all the circumstances before you may,
18 however, permit you to make a determination as to a
19 defendant's state of mind. Indeed, in your every day affairs,
20 you are frequently called upon to determine a person's state
21 of mind from his or her words and actions in given
22 circumstances. You are asked to do the same here.

23 You have been instructed that in order to sustain
24 its burden of proof, the government must prove that the
25 defendant acted willfully. To act willfully means to act with

JURY CHARGE

3796

1 knowledge that one's conduct is unlawful and with an intent to
2 do something the law forbids. That is to say, with bad
3 purpose, either to disobey or to disregard the law.

4 For the sake of clarity, I will first address
5 Count 2 of the indictment, then Count 1, and then the
6 remaining counts.

7 Count 2 of the indictment charges both defendants
8 with the conspiracy to commit mail and wire fraud.
9 Specifically, Count 2 states, in pertinent part, in or about
10 and between October 2012 and July 2014, both dates being
11 approximate and inclusive, within the Eastern District of New
12 York and elsewhere, the defendants Abraxas J. Discala and
13 Kyleen Cane, together with others, did knowingly and
14 intentionally conspire to devise a scheme and artifice to
15 defraud investors and potential investors in the manipulated
16 public companies, and to obtain money and property from them,
17 by means of materially false and fraudulent pretenses,
18 representations and promises, and for the purpose of executing
19 such scheme and artifice, to cause to be delivered matter and
20 things by FedEx Corporation, FedEx, and other private and
21 commercial interstate carriers, according to the direction
22 thereon, contrary to Title 18, United States code, Section
23 1341, and to devise a scheme and artifice to defraud investors
24 and potential investors in the manipulated public companies,
25 and to obtain money and property from them by means of

JURY CHARGE

3797

1 materially false and fraudulent pretenses, representations and
2 promises, and for the purpose of executing such scheme and
3 artifice, to transmit and cause to be transmitted by means of
4 wire communication in interstate and foreign commerce
5 writings, signs, signals, pictures and sounds, contrary to
6 Title 18, United States Code, Section 1343.

7 I will first explain the crime of conspiracy
8 generally before turning to the alleged objects of the charged
9 conspiracy, that is, of mail fraud and wire fraud.

10 (Continued on the next page.)
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JURY CHARGE

3798

1 THE LAW CLERK: (Cont'g.) A conspiracy is an
2 offense separate from the commission of any offense that may
3 have been committed pursuant to the conspiracy. That is
4 because the formation of a conspiracy, of a partnership for
5 criminal purposes, is in and of itself a crime. Thus, if a
6 conspiracy exists, even if it should fail in achieving its
7 unlawful purpose, it is still punishable as a crime. The
8 essence of the charge of conspiracy is an understanding
9 between or among two or more persons, that they will act
10 together to accomplish a common objective that they know is
11 unlawful.

12 In order to prove the crime of conspiracy, the
13 government must prove two elements beyond a reasonable doubt:

14 First, the first element is that two or more persons
15 entered into the charged conspiracy;

16 Second, the second element is that the defendants
17 became members of the conspiracy with knowledge of its
18 criminal goal or goals and intending by their actions to help
19 it succeed.

20 The first element that the government must prove
21 beyond a reasonable doubt to establish the offense of
22 conspiracy is that two or more persons entered into the
23 charged conspiracy. One person cannot commit the crime of
24 conspiracy alone.

25 In order for the government to satisfy this element,

JURY CHARGE

3799

1 you need not find that the alleged members of the conspiracy
2 met together and entered into any express or formal agreement.
3 Similarly, you need not find that the alleged conspirators
4 stated, in words or writing, what the scheme was, its object
5 or purpose, or every precise detail of the scheme or the means
6 by which its object or purpose was to be accomplished.
7 Indeed, it is sufficient for the government to show that the
8 conspirators came to a mutual understanding, either spoken or
9 unspoken, between two or more people to cooperate with each
10 other to accomplish an unlawful act.

11 You may, of course, find that the existence of an
12 agreement to disobey or disregard the law has been established
13 by direct proof. However, since conspiracy is, by its very
14 nature, characterized by secrecy, you may also infer its
15 existence from the circumstances of a given case and the
16 conduct of the parties involved.

17 In the context of conspiracy cases, actions often
18 speak louder than words. In determining whether an agreement
19 existed here, consider the act and statements of all of those
20 you find to be participants as proof that a common design
21 existed on the part of the persons charged to act together to
22 accomplish an unlawful purpose.

23 The second element that the government must prove
24 beyond a reasonable doubt to establish the offense of
25 conspiracy, is that a defendant became a member in the charged

JURY CHARGE

3800

1 conspiracy with knowledge of its criminal goal or goals and
2 intending by his or her actions to help it succeed.

3 If you are satisfied that the conspiracy charged in
4 the indictment existed, you must next ask yourselves who the
5 members of that conspiracy were. In deciding whether either
6 defendant was, in fact, a member of the conspiracy, you should
7 consider whether, based upon all of the evidence, it appears
8 that a defendant knowingly and willfully joined the
9 conspiracy. Did the defendant participate in it with
10 knowledge of its unlawful purpose and with the specific
11 intention of furthering its business or objective as an
12 associate or worker?

13 Now, it has been said that in order for either
14 defendant to be deemed a participant in a conspiracy, he or
15 she must have had a stake in the venture or its outcome. You
16 are instructed that, while proof of a financial interest in
17 the outcome of a scheme is not essential, if you find that a
18 defendant had such an interest, that is a factor that you may
19 properly consider in determining whether or not a defendant
20 was a member of the conspiracy charged in the indictment.

21 As I mentioned a moment ago, before either defendant
22 can be found to have been a conspirator, you must first find
23 that he or she knowingly joined in the unlawful agreement or
24 plan. The key question, therefore, is whether either
25 defendant joined the conspiracy with an awareness of at least

JURY CHARGE

3801

1 some of the basic aims and purposes of the unlawful agreement.

2 It is important for you to note that a defendant's
3 participation in the conspiracy must be established by
4 independent evidence of his or her own acts or statements, as
5 well as those of the other alleged co-conspirators, and the
6 reasonable inferences which may be drawn from them.

7 A defendant's knowledge is a matter of inference
8 from the facts proved. In that connection, I instruct you
9 that to become a member of the conspiracy, a defendant need
10 not have known the identities of each and every other member,
11 nor need he or she have been apprised of all of their
12 activities. Moreover, a defendant need not have been fully
13 informed as to all of the details or the scope of the
14 conspiracy in order to justify an inference of knowledge on
15 his or her part. Furthermore, a defendant need not have
16 joined in all of the conspiracy's unlawful objectives.

17 The extent of a defendant's participation has no
18 bearing on the issue of that defendant's guilt. A
19 conspirator's liability is not measured by the extent or
20 duration of his participation. Indeed, each member may
21 perform separate and distinct acts and may perform them at
22 different times. Some conspirators play major roles, while
23 others play minor parts in the scheme. An equal role is not
24 what the law requires. In fact, even a single act may be
25 sufficient to draw a defendant within the ambit of the

1 conspiracy.

2 I want to caution you, however, that a defendant's
3 mere presence at the scene of an alleged crime does not, by
4 itself, make him or her a member of the conspiracy.

5 Similarly, mere association with one or more members of the
6 conspiracy does not automatically make a defendant a member.

7 A person may know, or be friendly with, a criminal, without
8 being a criminal himself or herself. Mere similarity of
9 conduct or the fact that they may have assembled together and
10 discussed common aims and interests does not necessarily
11 establish proof of the existence of a conspiracy.

12 I also want to caution you that mere knowledge or
13 acquiescence, without participation, in the unlawful plan is
14 not sufficient. Moreover, the fact that the acts of a
15 defendant, without knowledge, merely happen to further the
16 purposes or objectives of the conspiracy, does not make the
17 defendant a member. More is required under the law. What is
18 necessary is that a defendant must have participated with
19 knowledge of at least some of the purposes or objectives of
20 the conspiracy and with the intention of aiding in the
21 accomplishment of those unlawful ends.

22 In sum, a defendant, with an understanding of the
23 unlawful character of the conspiracy, must have intentionally
24 engaged, advised or assisted in it for the purpose of
25 furthering the illegal undertaking. He or she thereby became

JURY CHARGE

3803

1 a knowing and willing participant in the unlawful agreement;
2 that is to say, a conspirator. Again, an act is done
3 willfully if done voluntarily and intentionally, and with the
4 specific intent to do something the law forbids; that is to
5 say, with a bad purpose either to disobey or disregard the
6 law. These are findings you must make separately and
7 unanimously with respect to each defendant.

8 To determine whether the government has proved
9 beyond a reasonable doubt that either defendant engaged in an
10 illegal conspiracy, you must also understand the crimes that
11 Count Two charges them with agreeing to commit.

12 The crimes alleged to be the objects or purposes of
13 the conspiracy, the thing that Count Two charges the
14 defendants with agreeing to commit are mail and wire fraud. I
15 will first discuss mail fraud, and then turn to wire fraud.

16 First, that there was a scheme or artifice to
17 defraud or to obtain money or property by materially false and
18 fraudulent pretenses, representations or promises;

19 Second, that the defendants knowingly and willfully
20 participated in the scheme or artifice to defraud, with
21 knowledge of its fraudulent nature and with specific intent to
22 defraud; and

23 Third, that, in execution or in furtherance of that
24 scheme, the defendant used or caused the use of the mails.

25 I will now explain each of these elements further.

JURY CHARGE

3804

1 The first element the government must prove beyond a
2 reasonable doubt is the existence of a scheme or artifice to
3 defraud or to obtain money or property by means of false or
4 fraudulent pretenses, representations or promises.

5 A scheme or artifice is merely a plan for the
6 accomplishment of an objective. Fraud is a general term which
7 embraces all the various means that an individual can devise
8 and that are used by an individual to gain an advantage over
9 another by false representations, suggestions, or deliberate
10 disregard for the truth.

11 A scheme to defraud is any pattern or course of
12 conduct designed to obtain money or property by means of
13 trick, deceit, deception or by false or fraudulent
14 representations or promises. A representation or statement is
15 fraudulent if it was falsely made with the intent to deceive.
16 Half-truths, the concealment or omission of material facts, or
17 the expression of an opinion not honestly entertained may also
18 constitute false or fraudulent statements under the statute.
19 The fraudulent representation must relate to a material fact
20 or matter. A material fact is one which would reasonably be
21 expected to be of concern to a reasonable and prudent person
22 in relying upon the representation or statement in making a
23 decision.

24 The deception need not be premised upon spoken or
25 written words alone. The arrangement of the words, or the

1 circumstances in which they are used may convey a false and
2 deceptive appearance. If there is intentional deception, the
3 manner in which it was accomplished does not matter.

4 The government is not required to establish that
5 either defendant himself or herself originated the scheme to
6 defraud. Nor is it necessary that either defendant actually
7 realized any gain from the scheme, or that the intended victim
8 actually suffered any loss. Success is not an element of the
9 crime charged. That is because only a scheme to defraud, and
10 not actual fraud, must be proved to sustain a conviction.

11 A scheme to defraud need not be shown by direct
12 evidence, but may be established by all of the circumstances
13 and facts in the case.

14 It is also not necessary that the government prove
15 each and every misrepresentation or false promise that the
16 government alleges. It is sufficient if the government
17 proves, beyond a reasonable doubt, that one or more of the
18 material misrepresentations was made in furtherance of the
19 scheme to defraud. You must, however, all agree on at least
20 one misrepresentation that is proved to be false. That is,
21 you cannot find a defendant guilty if only some of you think
22 that misrepresentation A is false, while others think that
23 only misrepresentation B is false. There must be at least one
24 specific pretense, representation or promise about a material
25 fact that all of you unanimously find to be false in order to

1 find a defendant guilty.

2 If you find that the government has sustained its
3 burden of proof that a scheme to defraud, as charged, did
4 exist, you next should consider the second element of the
5 offense of mail fraud.

6 The second element that the government must prove
7 beyond a reasonable doubt is that a defendant executed the
8 scheme knowingly, willfully, and with specific intent to
9 defraud a victim.

10 Again, to act knowingly means to act voluntarily and
11 deliberately, rather than mistakenly or because of ignorance
12 or accident.

13 To act willfully means to act knowingly and
14 purposely, with an intent to do something the law forbids;
15 that is to say, with a bad purpose to disobey or disregard the
16 law.

17 To act with intent to defraud means to act knowingly
18 and with the specific intent to deceive, for the purpose of
19 obtaining money or property from another.

20 How someone acted, his or her state of mind, is a
21 question of fact for you to determine. Direct proof of
22 knowledge and fraudulent intent is not always available, nor
23 is it required. The ultimate facts of knowledge and criminal
24 intent may be established by circumstantial evidence, which I
25 explained to you earlier. Circumstantial evidence, if

JURY CHARGE

3807

1 believed, is of no less value than direct evidence.

2 Since an essential element of the mail fraud crime
3 charged is intent to defraud, it follows that good faith on
4 the part of a defendant is a complete defense to a charge of
5 mail fraud. A defendant, however, has no burden to establish
6 a defense of good faith. The burden is on the government to
7 prove fraudulent intent and consequent lack of good faith
8 beyond a reasonable doubt.

9 Under the mail fraud statute, even false
10 representations or statements, or omissions of material facts,
11 do not amount to a fraud unless done with fraudulent intent.
12 However misleading or deceptive a plan may be, it is not
13 fraudulent if it was devised or carried out in good faith. An
14 honest belief in the truth of the representations made by or
15 on behalf of the defendant is a complete defense, however
16 inaccurate the statements may turn out to be.

17 In determining whether a defendant acted knowingly,
18 you may consider whether that defendant deliberately closed
19 his or her eyes to what otherwise would have been obvious to
20 him or her. You may only infer knowledge of the existence of
21 a particular fact if a defendant was aware of a high
22 probability of its existence, unless that defendant actually
23 believed that it did not exist. If you find beyond a
24 reasonable doubt that a defendant acted with a conscious
25 purpose to avoid learning a highly probable truth, then this

JURY CHARGE

3808

1 element may be satisfied. However, guilty knowledge may not
2 be established by demonstrating that a defendant was merely
3 negligent, foolish, careless, or mistaken.

4 There is another consideration to bear in mind in
5 deciding whether or not the defendant acted in good faith.
6 You are instructed that if a defendant participated in the
7 scheme to defraud, then a belief by that defendant, if such a
8 belief existed, that ultimately everything would work out so
9 that no one would lose any money does not require you to find
10 that that defendant acted in good faith. No amount of honest
11 belief on the part of a defendant that the scheme would, for
12 example, ultimately make a profit for investors, will excuse
13 fraudulent actions or false representations caused by him or
14 her.

15 As a practical matter, then, in order to sustain a
16 charge of mail fraud, the government must prove beyond a
17 reasonable doubt that a defendant knew his or her conduct as a
18 participant in the scheme was calculated to deceive and,
19 nonetheless, he or she associated himself or herself with the
20 alleged fraudulent scheme for the purpose of causing some
21 financial loss to another or to deprive another of their
22 interest in property.

23 To conclude with this element, if you find the
24 government has established beyond a reasonable doubt that a
25 defendant was a knowing participant and acted with intent to

JURY CHARGE

3809

1 defraud, you should consider the third element of the mail
2 fraud charge.

3 The third and final element that the government must
4 prove beyond a reasonable doubt is the use of the mails in
5 furtherance of the scheme to defraud. The use of the mails,
6 as I have used it here, includes material sent through either
7 the United States Postal Service or a private or commercial
8 interstate carrier.

9 The mailed matter need not contain a fraudulent
10 representation or purpose or request for money. It must,
11 however, further or assist in the carrying out of the scheme
12 to defraud. It is not necessary for a defendant to be
13 directly or personally involved in the mailing, as long as the
14 mailing was reasonably foreseeable in the execution of the
15 alleged scheme to defraud in which that defendant is accused
16 of participating.

17 In this regard, it is sufficient to establish this
18 element of the crime if the evidence justifies a finding that
19 a defendant caused the mailing by others. This does not mean
20 that that defendant must specifically have authorized others
21 to do the mailing.

22 When one does an act with knowledge that the use of
23 the mails will follow in the ordinary course of business or
24 where such use of the mails reasonably can be foreseen, even
25 though not actually intended, then he or she causes the mails

1 to be used.

2 With respect to the use of the mails, the government
3 must prove beyond a reasonable doubt the particular mailing
4 charged in the indictment. However, the government does not
5 need to prove that the mailings were made on the exact date
6 charged in the indictment. It is sufficient if the evidence
7 establishes beyond a reasonable doubt that the mailing was
8 made on a date substantially similar to the date charged in
9 the indictment.

10 The elements of wire fraud are as follows:

11 First, that there was a scheme or artifice to
12 defraud or to obtain money or property by materially false and
13 fraudulent pretenses, representations or promises;

14 Second, that the defendants knowingly and willfully
15 participated in the scheme or artifice to defraud, with
16 knowledge of its fraudulent nature and with specific intent to
17 defraud; and

18 Third, that, in execution or in furtherance of that
19 scheme, the use of an interstate or foreign wire occurred.
20 This would include the use of a landline telephone or cell
21 phone or a fax machine, or the transmission of electronic data
22 via the radio, television or the internet.

23 I will now explain each of these elements further.

24 The first element the government must prove beyond a
25 reasonable doubt is the existence of a scheme or artifice to

JURY CHARGE

3811

1 defraud or to obtain money or property by means of false or
2 fraudulent pretenses, representations or promises.

3 A scheme or artifice is merely a plan for the
4 accomplishment of an objective. Fraud is a general term which
5 embraces all the various means that an individual can devise
6 and that are used by an individual to gain an advantage over
7 another by false representations, suggestions, or deliberate
8 disregard for the truth.

9 A scheme to defraud in any pattern or course of
10 conduct designed to obtain money or property by means of
11 trick, deceit, deception or by false or fraudulent
12 representations or promises. A representation or statement is
13 fraudulent if it was falsely made with the intent to deceive.
14 Half-truths, the concealment or omission of material facts, or
15 the expression of an opinion not honestly entertained may also
16 constitute false or fraudulent statements under the statute.
17 The fraudulent representation must relate to a material fact
18 or matter. A material fact is one which would reasonably be
19 expected to be of concern to a reasonable and prudent person
20 in relying upon the representation or statement in making a
21 decision.

22 The deception need not be premised upon spoken or
23 written words alone. The arrangement of the words, or the
24 circumstances in which they are used may convey a false and
25 deceptive appearance. If there is intentional deception, the

JURY CHARGE

3812

1 manner in which it is accomplished does not matter.

2 The government is not required to establish that
3 either defendant himself or herself originated the scheme to
4 defraud. Nor is it necessary that either defendant actually
5 realized any gain from the scheme, or that the intended victim
6 actually suffered any loss. Success is not an element of the
7 crime charged. That is because only a scheme to defraud, and
8 not actual fraud, must be proved to sustain a conviction.

9 A scheme to defraud need not be shown by direct
10 evidence, but may be established by all of the circumstances
11 and facts in the case.

12 It is also not necessary that the government prove
13 each and every misrepresentation or false promise that the
14 government alleges. It is sufficient if the government
15 proves, beyond a reasonable doubt, that one or more of the
16 material misrepresentations was made in furtherance of the
17 scheme to defraud. You must, however, all agree on at least
18 one misrepresentation that is proved to be false. That is,
19 you cannot find a defendant guilty if only some of you think
20 that misrepresentation A is false, while others think that
21 only misrepresentation B is false. There must be at least one
22 specific pretense, representation or promise about a material
23 fact that all of you find to be false in order to find a
24 defendant guilty.

25 If you find that the government has sustained its

JURY CHARGE

3813

1 burden of proof that a scheme to defraud, as charged, did
2 exist, you next should consider the second element of the
3 offense of wire fraud.

4 The second element that the government must prove
5 beyond a reasonable doubt is that a defendant executed the
6 scheme knowingly, willfully, and with specific intent to
7 defraud a victim.

8 To repeat, to act knowingly means to act voluntarily
9 and deliberately, rather than mistakenly or because of
10 ignorance or accident.

11 To act willfully means to act knowingly and
12 purposely, with an intent to do something the law forbids;
13 that is to say, with a bad purpose to disobey or disregard the
14 law.

15 To act with intent to defraud means to act knowingly
16 and with the specific intent to deceive, for the purpose of
17 obtaining money or property from another.

18 How someone acted, his or her state of mind, is a
19 question of fact for you to determine. Direct proof of
20 knowledge and fraudulent intent is not always available, nor
21 is it required. The ultimate facts of knowledge and criminal
22 intent may be established by circumstantial evidence, which I
23 explained to you earlier. Circumstantial evidence, if
24 believed, is of no less value than direct evidence.

25 Since an essential element of the wire fraud crime

JURY CHARGE

3814

1 charged is intent to defraud, it follows that good faith on
2 the part of a defendant is a complete defense to a charge of
3 wire fraud. A defendant, however, has no burden to establish
4 a defense of good faith. The burden is on the government to
5 prove fraudulent intent and consequent lack of good faith
6 beyond a reasonable doubt.

7 Under the wire fraud statute, even false
8 representations or statements, or omissions of material facts,
9 do not amount to a fraud unless done with fraudulent intent.
10 However misleading or deceptive a plan may be, it is not
11 fraudulent if it was devised or carried out in good faith. An
12 honest belief in the truth of the representations made by or
13 on behalf of the defendant is a complete defense, however
14 inaccurate the statements may turn out to be.

15 In determining whether a defendant acted knowingly,
16 you may consider whether that defendant deliberately closed
17 his or her eyes to what otherwise would have been obvious to
18 him or her. You may only infer knowledge of the existence of
19 a particular fact if a defendant was aware of a high
20 probability of its existence, unless that defendant actually
21 believed that it did not exist. If you find beyond a
22 reasonable doubt that a defendant acted with a conscious
23 purpose to avoid learning a highly probable truth, then this
24 element may be satisfied. However, guilty knowledge may not
25 be established by demonstrating that a defendant was merely

JURY CHARGE

3815

1 negligent, foolish, careless, or mistaken.

2 There is another consideration to bear in mind in
3 deciding whether or not the defendant acted in good faith.
4 You are instructed that if a defendant participated in the
5 scheme to defraud, then a belief by that defendant, if such a
6 belief existed, that ultimately everything would work out so
7 that no one would lose any money does not require you to find
8 that that defendant acted in good faith. No amount of honest
9 belief on the part of the defendant that the scheme would, for
10 example, ultimately make a profit for investors, will excuse
11 fraudulent actions or false representations caused by him or
12 her.

13 As a practical matter, then, in order to sustain a
14 charge of wire fraud, the government must establish beyond a
15 reasonable doubt that a defendant knew that his or her conduct
16 as a participant in the scheme was calculated to deceive and,
17 nonetheless, he or she associated himself or herself with the
18 alleged fraudulent scheme for the purpose of causing some
19 financial loss to another or to deprive another of their
20 interest in property.

21 To conclude with this element, if you find the
22 government has established beyond a reasonable doubt that a
23 defendant was a knowing participant and acted with intent to
24 defraud, you should consider the third element of the wire
25 fraud charge.

JURY CHARGE

3816

1 The third and final element that the government must
2 prove beyond a reasonable doubt is the use of an interstate
3 wire communication in furtherance of the scheme to defraud.
4 The wire communication must pass between two or more states,
5 or it must pass between the United States and a foreign
6 country. A wire communication includes a wire transfer of
7 funds between banks in different states, and telephone calls,
8 emails, and facsimiles between two different states.

9 The use of the wires need not itself be a fraudulent
10 representation. It must, however, further or assist in the
11 carrying out of the scheme to defraud. It is not necessary
12 for a defendant to be directly or personally involved in the
13 wire communication, as long as the communication was
14 reasonably foreseeable in the execution of the alleged scheme
15 to defraud in which that defendant is accused of
16 participating.

17 In this regard, it is sufficient to establish this
18 element of the crime if the evidence justifies a finding that
19 a defendant caused the wires to be used by others. This does
20 not mean that that defendant must specifically have authorized
21 others to make the call.

22 When one does an act with knowledge that the use of
23 the wires will follow in the ordinary course of business or
24 where such use of the wires reasonably can be foreseen, even
25 though not actually intended, then he or she causes the wires

JURY CHARGE

3817

1 to be used.

2 Count One also charges a conspiracy, though of a
3 different type. Count One of the indictment charges both
4 defendants with conspiracy to commit securities fraud.

5 Specifically, Count One states, in pertinent part:

6 In or about and between October 2012 and July 2014,
7 both dates being approximate and inclusive, within the Eastern
8 District of New York and elsewhere, the defendants Abraxas J.
9 Discala, also known as AJ Discala, and Kyleen Cane, together
10 with others, did knowingly and willfully conspire to use and
11 employ manipulative and deceptive devices and contrivances,
12 contrary to Rule 10b-5 of the rules and regulations of the
13 United States Securities and Exchange Commission, Title 17,
14 Code of Federal Regulations, Section 240.10b-5, by (A)
15 employing devices, schemes and artifices to defraud; (B)
16 making untrue statements of material fact and omitting to
17 state material facts necessary in order to make the statements
18 made, in light of the circumstances under which they were
19 made, not misleading; and (C) engaging in acts, practices and
20 courses of business which would and did operate as a fraud and
21 deceit upon investors and potential investors in the
22 manipulated public companies, in connection with the purchase
23 and sale of investments in the manipulated public companies,
24 directly and indirectly, by use of means and instrumentalities
25 of interstate commerce and the mails, contrary to Title 15,

JURY CHARGE

3818

1 United States Code, Sections 78J(B) and 78FF.

2 The relevant statutes for this charge are 18 U.S.C.
3 Section 371, which provides, in relevant part:

4 If two or more persons conspire either to commit any
5 offense against the United States, and one or more of such
6 persons do any act to effect the object of the conspiracy,
7 each shall be punished.

8 And, 15 U.S.C. Section 78J, which provides in
9 relevant part that:

10 It shall be unlawful for any person, directly or
11 indirectly, by the use of any means or instrumentality of
12 interstate commerce or of the mails, or of any facility of any
13 national securities exchange.

14 To use or employ, in connection with the purchase or
15 sale of any security any manipulative or deceptive device or
16 contrivance in contravention of such rules and regulations as
17 the Commission may prescribe as necessary or appropriate in
18 the public interest or for the protection of investors.

19 I have already instructed you as to the elements the
20 government must establish to prove either defendant's
21 participation in a conspiracy. However, as with Count Two, to
22 determine whether the government has proved beyond a
23 reasonable doubt that either defendant engaged in an illegal
24 conspiracy, you must also understand the crimes that Count One
25 charges him or her with agreeing to commit.

1 As I noted, the alleged object of the conspiracy
2 charged in Count One is securities fraud. The elements of
3 securities fraud are as follows:

4 First, that in connection with the purchase or sale
5 of a security, the defendant did any one or more of the
6 following:

7 (1) employed a device, scheme or artifice to
8 defraud, or

9 (2) made an untrue statement of a material fact or
10 omitted to state a material fact, which made what was said,
11 under the circumstances, misleading, or

12 (3) engaged in an act, practice or course of
13 business that operated, or would operate, as a fraud or deceit
14 upon a purchaser or seller;

15 Second, that the defendant acted willfully,
16 knowingly and with the intent to defraud;

17 And third, that the defendant knowingly used, or
18 caused to be used, any means or instruments of transportation
19 or communication in interstate commerce or the use of the
20 mails in furtherance of the fraudulent conduct.

21 I will now go through these elements in greater
22 detail.

23 The first element that the government must prove
24 beyond a reasonable doubt is that, in connection with the
25 purchase or sale of a security, the defendant did one or more

1 of the following:

2 (1) employed a device, scheme or artifice to
3 defraud, or

4 (2) made an untrue statement of a material fact or
5 omitted to state a material fact necessary in order to make
6 the statements made, in the light of the circumstances under
7 which they were made, not misleading, or

8 (3) engaged in an act, practice or course of
9 business that operated, or would operate, as a fraud or deceit
10 upon a purchaser or seller.

11 It is not necessary for the government to establish
12 all three types of unlawful conduct in connection with the
13 sale or purchase of a security. Any one will be sufficient
14 for a conviction, if you so find, but you must be unanimous as
15 to which type of unlawful conduct you find to have been
16 proven.

17 A device, scheme or artifice to defraud is merely a
18 plan for the accomplishment of any objective. Fraud is a
19 general term which embraces all efforts and means that
20 individuals devise to take advantage of others. This includes
21 techniques, such as wash trades or match trades, that are
22 intended to mislead investors by artificially affecting market
23 activity. Wash trades are prearranged purchases and sales of
24 securities that match each other at a specified price, volume
25 and time of execution, so as to involve no change in

JURY CHARGE

3821

1 beneficial ownership. Match trades are similar to wash trades
2 but involve a related third person or party who places one
3 side of the trade. The law which the defendants are alleged
4 to have violated generally prohibits practices such as wash
5 sales, matched orders or rigged prices that are intended to
6 mislead investors by artificially affecting market activity.

7 The fraudulent or deceitful conduct alleged need not
8 relate to the investment value of the securities involved in
9 this case.

10 You need not find that the defendant actually
11 participated in any securities transaction if the defendant
12 was engaged in fraudulent conduct that was in connection with
13 a purchase or sale. The in connection with aspect of this
14 element is satisfied if you find that there was some nexus or
15 relation between the allegedly fraudulent conduct and the sale
16 or purchase of securities. Fraudulent conduct may be in
17 connection with the purchase or sale of securities if you find
18 that the alleged fraudulent conduct touched upon a securities
19 transaction.

20 It is no defense to an overall scheme to defraud
21 that the defendant was not involved in the scheme from its
22 inception or played only a minor role with no contact with the
23 investors and purchasers of the securities in question. Nor
24 is it necessary for you to find that the defendant was the
25 actual seller or offeror of the securities. It is sufficient

JURY CHARGE

3822

1 if the defendant participated in the scheme or fraudulent
2 conduct that involved the purchase or sale of stock. By the
3 same token, the government need not prove that the defendant
4 personally made the misrepresentation or that he or she
5 omitted the material fact. It is sufficient if the government
6 establishes that the defendant caused the statement to be made
7 or the fact to be omitted. With regard to the alleged
8 misrepresentations and omissions, you must determine whether
9 the statement was true or false when it was made, and, in the
10 case of alleged omissions, whether the omission was
11 misleading.

12 If you find that the government has established
13 beyond a reasonable doubt that a statement was real or
14 omitted, you must next determine whether the fact misstated
15 was material under the circumstances. A material fact is one
16 that would have been significant to a reasonable investor's
17 investment decision. This is not to say that the government
18 must prove that the misrepresentation would have deceived a
19 person of ordinary intelligence. Once you find that there was
20 a material misrepresentation or omission of a material fact,
21 it does not matter whether the intended victims were gullible
22 buyers or sophisticated investors, because the securities laws
23 protect the gullible and unsophisticated as well as the
24 experienced investor.

25 Nor does it matter whether the alleged unlawful

JURY CHARGE

3823

1 conduct was successful or not, or that the defendant profited
2 or received any benefits as a result of the alleged scheme.
3 Success is not an element of the crime charged. However, if
4 you find that the defendant did profit from the alleged
5 scheme, you may consider that in relation to the third element
6 of intent, which I will discuss in a moment.

7 The second element that the government must
8 establish beyond a reasonable doubt is that the defendant
9 participated in the scheme to defraud knowingly, willfully and
10 with intent to defraud.

11 Those terms have the same meanings that I previously
12 provided to you.

13 The third and final element that the government must
14 prove beyond a reasonable doubt is that the defendant
15 knowingly used, or caused to be used, the mails or any means
16 or instrumentalities of transportation or communication in
17 interstate commerce, including telephones, in furtherance of
18 the scheme to defraud.

19 It is not necessary that a defendant be directly or
20 personally involved in any mailing or telephone calls. If the
21 defendant was an active participant in the scheme and took
22 steps or engaged in conduct which he or she knew or reasonably
23 could foresee would naturally and probably result in the use
24 of the mails or telephone lines, then you may find that he
25 caused the mails or instrumentality of interstate commerce to

1 be used.

2 When one does an act with the knowledge that the use
3 of interstate means of communication will follow in the
4 ordinary course of business, or where such use reasonably can
5 be foreseen, even though not actually intended, then he causes
6 such means to be used.

7 Nor is it necessary that the items sent through the
8 mails or communicated by a telephone contain the fraudulent
9 material, or anything criminal or objectionable. The matter
10 mailed or communicated by telephone may be entirely innocent.

11 The use of telephones or the mail need not be
12 central to the execution of the scheme, and may even be
13 incidental to it. All that is required is that the use of
14 telephones or the mail bear some relation to the object of the
15 scheme or fraudulent conduct.

16 In fact, the actual offer or sale need not be
17 accompanied or accomplished by the use of telephones or the
18 mail, so long as the defendant is still engaged in actions
19 that are a part of a fraudulent scheme.

20 I have already instructed you on conspiracy
21 generally. Those same instructions apply to Count One. As a
22 reminder, the government need not prove that a defendant
23 actually committed the unlawful acts charged as the objects of
24 the conspiracy in Count One, that is, securities fraud.
25 Rather, the government must prove, beyond a reasonable doubt,

1 the following:

2 First, that two or more persons entered into an
3 agreement to commit securities fraud; and

4 Second, that the defendant whom you are considering
5 knowingly and intentionally became a member of the conspiracy.

6 There are two additional elements that the
7 government must prove beyond a reasonable doubt in order to
8 establish that a defendant is guilty of the conspiracy alleged
9 in count one.

10 The first additional element the government must
11 prove is that one of the members of the conspiracy knowingly
12 committed at least one of the overt acts charged in the
13 indictment.

14 The Indictment alleges:

15 In furtherance of the conspiracy and to effect its
16 objects, within the Eastern District of New York and
17 elsewhere, the defendants, together with others, committed and
18 caused to be committed, among others, the following: OVERT
19 ACTS.

20 A. On or about June 4, 2013, Shapiro cause an
21 e-mail to John Doe 3, a representative of Ramapo College of
22 New Jersey whose identity is known to the grand jury, copying
23 two of Shapiro's colleagues, whose identities are known to the
24 grand jury, and stated, in part, my apologies on behalf of
25 CodeSmart. We did not know about that language you [sic] were

1 allowed to use and certainly will consult with you next time
2 we do a promotion. This is all done in a spirit of promoting
3 business opportunities for you as a partner.

4 B. On or about August 15, 2013, Discala signed a
5 purchase agreement on behalf of Fidelis whereby he sold 25,000
6 shares of CodeSmart common stock to Victim 1, an individual
7 whose identity is known to the grand jury, for \$3,500 at a
8 purchase price of 14 cents per share.

9 C. On or about August 27, 2013, Shapiro filed with
10 the SEC a Form 8-K on behalf of CodeSmart and stated that he
11 had purchased 25,000 shares of the company's stock from the
12 public market at the market value of \$3.21 per share for a
13 cost of \$80,250.

14 D. On or about May 6, 2014, during a telephone call
15 between Discala and Goodrich discussing the trading of Cubed
16 shares, Discala inquired, in part, can you get your trader off
17 that 451? He's killing the box. Adding, it's 526, he's in
18 the middle of the 5's at 451. And Goodrich responded, in part
19 Where do you want him? I'll call him right now.

20 E. On or about May 12, 2014, during a telephone
21 call between Discala and Victor Azrak, Victor Azrak stated, in
22 part, we should start sending Josephberg morons by the way.
23 We could trade for free, you know, send him a moron, you know,
24 a guy you don't know and then we'll just buy stocks and if
25 they don't go up by the end, we'll buy, like, options Twitter

1 options that expire in, like, a day. Either we'll make like
2 twenty times or we'll just give him the stock.

3 F. On or about May 17, 2014, during a telephone
4 call between Discala and Marc Wexler, Discala stated, in part,
5 so our deal is going to pay the cube 250, cause these guys
6 can't generate revenue, so I'm going to generate it myself.

7 G. On or about May 20, 2014, during a telephone
8 call between Discala and Goodrich about the escrow account and
9 Cubed trading, Goodrich stated, in part, you did a perfect
10 job. Hearing it out of Cane's mouth, that makes sense.

11 H. On or about May 20, 2014, during a telephone
12 call between Discala and Victor Azrak, Discala stated, in
13 part, right, because I'm the expletive brake and the gas
14 expletive. If I take my foot off the brake it's \$55 tomorrow
15 (laughter).

16 I. On or about May 21, 2014, during a telephone
17 call between Discala and Cane, Cane stated, in part, the
18 investor relations/public relations guys are going to be doing
19 it and I also just talked to two people that are gonna
20 probably going to put in another half a million into Cubed for
21 some interim, interim money.

22 J. On or about May 22, 2014, during a telephone
23 call between Discala and Josephberg, Josephberg stated in
24 part, I don't want to be the only one buying today. I heard
25 it looks very bad for a broker to be the only one buying,

1 that's what I heard.

2 K. On or about May 27, 2014, during a telephone
3 call between Discala and Cane, Cane stated, in part, well,
4 it's um, it's gonna start happening. I don't know if the
5 press has even come out yet. There's gonna be a release today
6 on the acquisition. We're having a conference call in about
7 30 minutes with the first PR that's gonna go out the PR group.

8 L. On or about May 29, 2014, during a telephone
9 call between Discala and Goodrich, Discala stated, in part,
10 no, just buy 100 and stay under 43. I'll have the other guys
11 move up.

12 M. On or about June 6, 2014, during a telephone
13 call between Discala and Marc Wexler, Marc Wexler stated, in
14 part, we don't need to go up every expletive day, but the
15 bottom line is, you know, we're expletive supporting the
16 stock.

17 In order for the government to satisfy this element,
18 it is not required that all of the overt acts alleged in the
19 indictment be proven or that the overt act was committed at
20 precisely the time alleged in the indictment. It is
21 sufficient if you are convinced beyond a reasonable doubt that
22 it occurred at or about the time and place stated. Similarly,
23 you need not find that either defendant himself or herself
24 committed the overt act. It is sufficient for the government
25 to show that one of the conspirators knowingly committed an

1 overt act in furtherance of the conspiracy, since, in the eyes
2 of the law, such an act becomes the act of all of the members
3 of the conspiracy.

4 The second additional element the government must
5 prove beyond a reasonable doubt is that the overt act or acts
6 you find were committed, were done specifically to further
7 some objective of the conspiracy.

8 In order for the government to satisfy this element,
9 it must prove, beyond a reasonable doubt, that at least one
10 overt act was knowingly and willfully done, by at least one
11 conspirator, in furtherance of some objective or purpose of
12 the conspiracy as charged in the indictment. In this regard,
13 you should bear in mind that the overt act, standing alone,
14 may be an innocent, lawful act. Frequently, however, an
15 apparently innocent act sheds its harmless character if it is
16 a step in carrying out, promoting, aiding or assisting the
17 conspiratorial scheme. Therefore, you are instructed that the
18 overt act does not have to be an act which, in and of itself,
19 is criminal or constitutes an objective of the conspiracy.

20 In sum, in order to prove that either defendant is
21 guilty of Count One, the government must prove, beyond a
22 reasonable doubt:

23 1) that the purpose of the conspiracy was to commit
24 securities fraud;

25 2) that that defendant knowingly and intentionally

1 joined the conspiracy;

2 3) that at least one of the overt acts alleged in
3 the indictment was committed by at least one member of the
4 conspiracy; and

5 4) that the overt act was committed specifically to
6 further some objective of the conspiracy.

7 I have explained to you the elements the government
8 must prove beyond a reasonable doubt as to Count One. The
9 government must also prove venue. As I explained to you
10 earlier, the government must prove venue only by a
11 preponderance of the evidence. I remind you that to establish
12 a fact by a preponderance of the evidence means to prove that
13 the fact is more likely true than not.

14 To establish venue for a conspiracy to commit
15 securities fraud as charged in Count One, the government must
16 prove that it is more likely than not that an overt act in
17 furtherance of the conspiracy was committed in the Eastern
18 District of New York. The overt act does not have to be an
19 overt act that is charged in the indictment in furtherance of
20 the conspiracy. In this regard, the government need not prove
21 that the crime charged was committed in the Eastern District
22 of New York or that the defendant or any alleged
23 co-conspirator was even physically present here. It is
24 sufficient to satisfy the venue requirement if an overt act in
25 furtherance of the conspiracy occurred within the Eastern

JURY CHARGE

3831

1 District of New York. This includes not just acts by the
2 defendants or their co-conspirators, but also acts that the
3 conspirators caused others to take that materially furthered
4 the ends of the conspiracy.

5 Therefore, if you find that it is more likely than
6 not that an overt act in furtherance of the conspiracy took
7 place in the Eastern District of New York, the government has
8 satisfied its burden of proof as to venue as to Count One.
9 Again, I caution you that the preponderance of the evidence
10 standard applies only to venue. The government must prove
11 each of the elements of all the counts beyond a reasonable
12 doubt.

13 In sum, if you find that the government has failed
14 to prove any one of the elements for Count One as to either
15 defendant, beyond a reasonable doubt, then you must find that
16 defendant not guilty of securities fraud conspiracy for
17 Count One. To find the defendant guilty of conspiring to
18 commit securities fraud as charged in Count One, you must find
19 that the government has proven, beyond a reasonable doubt,
20 each element of the conspiracy to commit securities fraud, and
21 that the government has also established venue for the count
22 by a preponderance of the evidence.

23 Count Three charges Abraxas Discala with securities
24 fraud in connection with the security CodeSmart. That charge
25 reads:

JURY CHARGE

3832

1 In or about and between October 2014 and July 2014,
2 both dates being approximate and inclusive, within the Eastern
3 District of New York and elsewhere, the defendant Abraxas J.
4 Discala, together with others, did knowingly and willfully use
5 and employ one or more manipulative and deceptive devices and
6 contrivances, contrary to Rule 10b-5 of the rules and
7 regulations of the United States Securities and Exchange
8 Commission, Title 17, Code of Federal Regulations,
9 Section 240.10b-5

10 (a) by employing one or more devices, schemes and
11 artifices to defraud;

12 (b) making one or more untrue statements of material
13 fact and omitting to state one or more material facts
14 necessary in order to make the statements made, in light of
15 the circumstances under which they were made, not misleading;
16 and

17 (c) engaging in one or more acts, practices and
18 courses of business which would and did operate as a fraud and
19 deceit upon one or more investors or potential investors in
20 CodeSmart, in connection with the purchases and sales
21 investments in CodeSmart, directly and indirectly, by use of
22 means and instrumentalities of interstate commerce and the
23 mails, contrary to Title 15, United States Code,
24 Sections 78J(B) and 78FF, Title 18, United States Code,
25 Sections 2 and 3551.

JURY CHARGE

3833

1 I have already provided you with the elements of
2 securities fraud and you should apply those elements here. To
3 summarize, securities fraud has the following elements:

4 First, that in connection with the purchase or sale
5 of a security, specifically CodeSmart in the case of
6 Count Three, the defendant did any one or more of the
7 following:

8 (1) employed a device, scheme or artifice to
9 defraud, or

10 (2) made an untrue statement of a material fact or
11 omitted to state a material fact which made what was said,
12 under the circumstances, misleading, or

13 (3) engaged in an act, practice or course of
14 business that operated, or would operate, as a fraud or deceit
15 upon a purchaser or seller.

16 Second, that the defendant acted willfully,
17 knowingly and with the intent to defraud.

18 Third, that the defendant knowingly used, or caused
19 to be used, any means or instruments of transportation or
20 communication in interstate commerce or the use of the mails
21 in furtherance of the fraudulent conduct.

22 If you find that the government has not proved each
23 of those three elements beyond a reasonable doubt with respect
24 to Discala's conduct in connection with the security
25 CodeSmart, you must find him not guilty.

JURY CHARGE

3834

1 Count Three, which I have just read and charges one
2 defendant, Abraxas Discala, with securities fraud, also
3 charges him with aiding and abetting the commission of
4 securities fraud. Count Four, which I will read shortly and
5 charges both defendants with securities fraud, also charges
6 them with aiding and abetting the commission of securities
7 fraud. Finally, Counts Five through Ten of the indictment,
8 which charge the defendant Abraxas Discala with wire fraud,
9 also charge him with aiding and abetting the commission of
10 wire fraud.

11 Aiding and abetting is defined under federal law in
12 Title 18, U.S.C. Section 2 which provides, in pertinent part,
13 the following:

14 Whoever commits an offense against the United States
15 or aids, abets, counsels, commands, induces or procures its
16 commission, is punishable as a principal.

17 Under the aiding and abetting statute, it is not
18 necessary for the government to show that the defendant
19 himself or herself physically committed the crime with which
20 he or she is charged in order for you to find the defendant
21 guilty. A person who aids or abets another to commit an
22 offense is just as guilty of that offense as if he committed
23 it himself.

24 Accordingly, you may find the defendant guilty of
25 the offense charged if you find beyond a reasonable doubt that

1 the government has proven that another person actually
2 committed the offense with which the defendant is charged, and
3 that the defendant aided or abetted that person in the
4 commission of the offense.

5 As you can see, the first requirement is that you
6 find that another person has committed the crime charged.
7 Obviously, no one can be convicted of aiding and abetting the
8 criminal acts of another if no crime was committed by the
9 other person in the first place. But if you do find that a
10 crime was committed, then you must consider whether the
11 defendant aided or abetted the commission of that crime.

12 In order to aid or abet another to commit a crime,
13 it is necessary that the defendant willfully and knowingly
14 associate himself or herself in some way with the crime, and
15 that he or she participate in the crime by doing some act to
16 help make the crime succeed.

17 Participation in a crime is willful if done
18 voluntarily and intentionally, and with the specific intent to
19 do something which the law forbids or with the specific intent
20 to fail to do something the law requires to be done; that is
21 to say, with a bad purpose either to disobey or disregard the
22 law.

23 The mere presence of a defendant where a crime is
24 being committed, even coupled with knowledge by the defendant
25 that a crime is being committed, or merely associating with

JURY CHARGE

3836

1 others who were committing a crime, is not sufficient to
2 establish aiding and abetting. One who has no knowledge that
3 a crime is being committed or is about to be committed but
4 inadvertently does something that aids in the commission of
5 that crime is not an aider and abettor. An aider and abettor
6 must know that the crime is being committed and act in a way
7 which is intended to bring about the success of the criminal
8 venture.

9 To determine whether the defendants aided or abetted
10 the commission of the crime with which they are charged, ask
11 yourself these questions:

12 Did he or she participate in the crime charged as
13 something he or she wished to bring about?

14 Did he or she associate himself or herself with the
15 criminal venture knowingly and willfully?

16 Did he or she seek by his or her actions to make the
17 criminal venture succeed?

18 If a defendant did, then that defendant is an aider
19 or abettor, and therefore guilty of the offense. If, on the
20 other hand, your answer to any one of these questions is no,
21 then that defendant is not an aider and better, and you must
22 find him or her not guilty.

23

24 (Continued on next page.)

25

JURY CHARGE

3837

1 THE LAW CLERK: Count Four charges Abraxas J.
2 Discala and Kyleen Cane with securities fraud in connection
3 with the security Cubed.

4 Count Four reads: In or about and between
5 March 2014 and July 2014, both dates being approximate and
6 inclusive, within the Eastern District of New York and
7 elsewhere, the defendant Abraxas J. Discala and Kyleen Cane,
8 together with others, did knowingly and willfully use and
9 employee one or more that manipulative and deceptive devices
10 and contrivances, contrary no Rule 10B-5 of the Rules and
11 Regulations of the United States Securities & Exchange
12 Commission, Title 17, Code of Federal Regulations, Section
13 240.10B-5 by (A) employing one or more devices, schemes and
14 artifices to defraud; (B) making one or more untrue statements
15 of material fact and omitting to state one or more material
16 facts necessary in order to make the statements made in light
17 of the circumstances under which they were made not
18 misleading; and (C) engaging in one or more acts, practices
19 and course of business which would and did operate as a fraud
20 and deceit upon one or more investors and potential investors
21 in Cubed in connection with the purchases and sales
22 investments in Cubed, directly and indirectly, by use of means
23 and instrumentalities of interstate commerce and the mails,
24 contrary to Title 15, United States Code Sections 17J(B) and
25 17FF, Title 18, United States Code Section 2 and 3551.

JURY CHARGE

3838

1 You should apply the elements of securities fraud to
2 this charge. To summarize for the final time, securities
3 fraud has the following elements.

4 First, that in connection with the purchase of a
5 sale or security, specifically Cubed, the defendants did any
6 one or more of the following.

7 One, employed a device, scheme or artifice to
8 defraud.

9 Or, two, made an untrue statement of a material fact
10 or omitted to state a material fact, which made what was said
11 under the circumstances misleading.

12 Or, three, engaged in an act, practice or course of
13 business that operated, or would operate, as a fraud or deceit
14 upon a purchaser or seller.

15 Second, that the defendants acted willfully,
16 knowingly and with the intent to defraud.

17 Third, that the defendants knowingly used or caused
18 to be used any means or instruments of transportation or
19 communication in interstate commerce or the use of the mails
20 in furtherance of the fraudulent conduct.

21 If you find that the Government has not proved each
22 of the three elements of securities fraud beyond a reasonable
23 doubt with respect to Discala and/or Cane's conduct in
24 connection with the securities Cubed, you must find him and/or
25 her not guilty.

JURY CHARGE

3839

1 I have explained to you the elements the Government
2 must prove beyond a reasonable doubt as to the securities
3 fraud charge in Counts Three and Four. The Government must
4 also prove venue for each count. Unlike the elements I just
5 implemented to you that the Government must prove beyond a
6 reasonable doubt, the Government must prove venue by a
7 preponderance of the evidence.

8 To establish a fact by a preponderance of the
9 evidence, means to proof that the fact is more likely true
10 than not. A preponderance of the evidence means the greater
11 weight of the evidence, both direct and circumstantial. It
12 refers to the quality and persuasiveness of the evidence, not
13 to the quantity of evidence.

14 To establish venue for securities fraud as charged
15 in Counts Three and Four, the Government must prove that it is
16 more likely than not that (1) the defendant intentionally and
17 knowingly caused an act or transaction constituting a
18 securities fraud to occur at least, in part, in the Eastern
19 District of New York, which consists of the counties of Kings,
20 also known as Brooklyn, Queens, Richmond, also known as Staten
21 Island, Nassau and Suffolk, or (2) that it was foreseeable
22 that such an act or transaction would occur in the Eastern
23 District of New York, and it did. The Government need not
24 prove that the defendant personally was present in the Eastern
25 District of New York. It is sufficient to satisfy the venue

JURY CHARGE

3840

1 requirement if the defendant intentionally and knowingly
2 caused an act or transaction constituting a securities fraud
3 to occur at least, in part, within the Eastern District of New
4 York. The Government also must prove that the act or
5 transaction must be a part of the actual crime of securities
6 fraud and not merely a step taken in preparation for the
7 commission of the crime.

8 Therefore, if you find that it is more likely than
9 not that an act or transaction in furtherance of the
10 securities fraud took place in the Eastern District of New
11 York, the Government has satisfied its burden of proof as to
12 venue as to Counts Three and Four.

13 Again, I caution you that the preponderance of the
14 evidence standard applies only to venue. The Government must
15 prove each of the elements of securities fraud in Counts Three
16 and Four beyond a reasonable doubt.

17 In sum, to find a defendant guilty of securities
18 fraud in as charged in Count Three and Count Four you must
19 find that the Government has proven beyond a reasonable doubt
20 each element of securities fraud for that count and that the
21 Government has also established venue for that count by a
22 preponderance of the evidence.

23 Counts five through ten each charge wire fraud.
24 Each individual wire in furtherance of a fraudulent scheme is
25 a separate crime. Counts Five through Ten charge six separate

JURY CHARGE

3841

1 crimes relating to six separate uses of the wires in
2 furtherance of one scheme.

3 Counts Five through Ten read: In or about and
4 between October 2012 and July 2014, both dates being
5 approximate and inclusive, within the Eastern District of New
6 York and elsewhere, the defendant, Abraxas J. Discala,
7 together with others, did knowingly and intentionally devise a
8 scheme and artifice to defraud investors and potential
9 investors in certain of the manipulated public companies, and
10 to obtain money and property from them by means of materially
11 false and fraudulent pretenses, representations and promises.

12 On or about the dates set forth below for the
13 purpose of executing such scheme and artifice, the defendant,
14 Abraxas J. Discala, together with others, did transmit and
15 cause to be transmitted by means of wire communication and
16 interstate and foreign commerce writings, signs, signals,
17 pictures and sounds, as set forth below.

18 Count five, approximate date May 9, 2014. Telephone
19 call from Discala to Goodrich discussing, among other things,
20 the manipulation of Cubed stock.

21 Count Six, with the approximate date of May 9, 2014,
22 telephone call from Discala to Jamie Sloan, an individual
23 whose identity is known to the Grand Jury, discussing among
24 other things the manipulation of Cubed stock.

25 Count Seven, with the approximate date of May 9,

JURY CHARGE

3842

1 2014, telephone call from Discala to Victor Azarak discussing
2 among other things, the manipulation of Cubed's and Star
3 Stream's stocks.

4 Count Eight, with an approximate date of June 12,
5 2014, telephone call from Discala to a trader at BNA, an
6 individual whose identity is known to the Grand Jury,
7 discussing, among other things, the manipulation of Star
8 Stream's stock.

9 Count Nine, with the approximate date of June 12,
10 2014, telephone call from Discala to Josephberg discussing,
11 among other things, the manipulation of Star Stream's stock.

12 Count Ten, with the approximate date of June 12,
13 2014, telephone call from Discala to Marc Wexler discussing,
14 among other things, the manipulation of Cubed's stock.

15 I have already described the elements of wire fraud,
16 those elements apply to these charges as well.

17 Notably with respect to the use of the wires, the
18 Government must prove beyond a reasonable doubt the particular
19 use charged in the Indictment. However, the Government does
20 not have to prove that the wires were used on the exact date
21 charged in the Indictment. It is sufficient if the evidence
22 establishes beyond a reasonable doubt that the wires were used
23 on a date substantially similar to the dates charged in the
24 Indictment.

25 I have already given you certain instructions

JURY CHARGE

3843

1 regarding the defense of good faith. I now want to impress
2 upon you that good faith is a complete defense to the charges
3 in this case. As I've already told you, some of the charges
4 in this case deal with false statements. A statement made
5 with good faith in its accuracy does not amount to a false
6 statement and is not a crime. This is so even if the
7 statement is in fact erroneous.

8 Other of the charges in this case deal with fraud.
9 If a defendant believed in good faith that he or she was
10 acting properly, even if he or she was mistaken in that
11 belief, and even if others were injured by his other her
12 conduct, there would no crime.

13 The burden of establishing lack of good faith and
14 criminal intent rests on the Government. A defendant is under
15 no burden to prove his or her good faith. Rather, as I have
16 charged you, the Government must prove bad faith or knowledge
17 of falsity, as appropriate, beyond a reasonable doubt.

18 Not every deceitful statement is a basis for fraud,
19 for fraud requires more than just deceit. A lie can support a
20 fraud conviction only if it is material; that is, if it would
21 affect a reasonable person's evaluation of a proposal. In
22 general, a false statement is material if it has a natural
23 tendency to influence or is capable of influencing the
24 decision of the decision-maker to which it was addressed.

25 In addition to being material, the deceit must also

JURY CHARGE

3844

1 be coupled with a contemplated harm to the victim. It is not
2 sufficient that the defendant realizes that the alleged scheme
3 is fraudulent and it has the capacity to cause harm to its
4 victims, but, instead proof must demonstrate that the
5 defendant had conscious, knowing intent to defraud, and that
6 the defendant content tamed or intended some harm to the
7 property rights of the victim.

8 Proof of motive is not a necessary element of the
9 crimes with which the defendants are charged. Proof of motive
10 does not establish guilt, nor does lack of motive establish
11 that a defendant is innocent. If the guilt of the defendant
12 is shown beyond a reasonable doubt, it is immaterial what the
13 motive for the crimes may be, or whether any motive may be
14 shown, but the presence or absence of motive is a circumstance
15 which you may consider as bearing on the intent of the
16 defendant.

17 You are about to go into the jury room, members of
18 the jury, to begin your deliberations. That brings us to the
19 third and final part of my charge, which provides some general
20 rules regarding your deliberations.

21 In order that your deliberations may proceed in an
22 orderly fashion, first, you should have a Foreperson.
23 Traditionally juror one acts as Foreperson. Of course, his or
24 her vote is the entitled to no greater weight than that of any
25 other juror.

JURY CHARGE

3845

1 Keep in mind that nothing I have said in these
2 instructions is intended to suggest to you in any way what I
3 think your verdict should be. That is entirely for you to
4 decide.

5 By way of reminder, I charge you once again that it
6 is your responsibility to judge the facts in this case from
7 are the evidence presented during the trial and to apply the
8 law as I have given it to you as to the facts as you find them
9 from the evidence.

10 When you retire, it is your duty to discuss the case
11 for the purpose of reaching agreement, if you can do so. Each
12 of you must decide the case for yourself, but should only do
13 so after considering all the evidence, listening to the views
14 of your fellow jurors, and discussing it fully. It is
15 important that you reach a verdict if you can do so
16 conscientiously. You should not hesitate to reconsider your
17 opinions from time to time and to change them if you are
18 convinced that they are wrong. However, do not surrender an
19 honest conviction as to weight and effect of the evidence
20 simply to arrive at a verdict.

21 Any verdict you reach must be unanimous. That is,
22 with respect to each count for each defendant you must all
23 agree as to whether your verdict is guilty or not guilty as to
24 that count.

25 Deliberations are to take place only in the jury

JURY CHARGE

3846

1 room. You will not discuss this case with anyone outside the
2 jury room, and that includes your fellow jurors. You will
3 only discuss the case when all 12 deliberating jurors are
4 together in the jury room with no one else present behind the
5 closed door. At no other time is there to be any discussion
6 about the merits of the case. Period.

7 Finally, you cannot allow consideration of the
8 punishment which may be imposed upon a defendant, if
9 convicted, to influence your verdict in any way or to enter
10 into your deliberations.

11 Regardless, the duty of imposing a sentence rests
12 exclusively with me. Your duty is to weigh the evidence in
13 the case and to determine whether the Government has proven
14 every element beyond a reasonable doubt solely upon such
15 evidence and upon the law without being influenced by any
16 assumption, conjecture, sympathy or inference not warranted by
17 the facts.

18 As I'm sure you can imagine, it is very important
19 that you not communicate with anyone outside the jury room
20 about your deliberations or about anything touching this case.
21 There is only one exception to this rule. If it becomes
22 necessary during your deliberations to communicate with me,
23 you may send a note through the Marshal, signed by your
24 foreperson or by one or more members of the jury. No member
25 of the jury should ever attempt to communicate with me except

JURY CHARGE

3847

1 by a signed writing. And I will never communicate with any
2 member of the jury on any subject touching the merits of the
3 case other than in writing or orally here in open court. If
4 you send any note to the Court, do not disclose anything about
5 your deliberations. Specifically, do not disclose to anyone,
6 not even to me, how the jury stands numerically or otherwise
7 on the question of the guilt or innocence of the defendant
8 until after you have reached a unanimous verdict on each
9 counted or have been discharged.

10 Keep in mind too, that in deliberations the jury's
11 recollection governs, nobody else's. It's not the Court's --
12 if I have made references to the testimony -- and not
13 counsel's recollection. It is your recollection that must
14 govern during your deliberations. If necessary, during those
15 deliberations you may request by jury note a reading from the
16 trial transcript that may refresh your recollection.

17 Please, as best you can, try to be as specific as
18 possible in your requests for read backs. In other words, if
19 you are interested only in a particular part of a witness's
20 testimony, please indicate that to us. It may take sometime
21 for us to locate the testimony in the transcripts, so please
22 be patient. And as a general matter, if there is ever a delay
23 in responding to a jury note, please understand there is a
24 reason for it. None of us goes anywhere. As soon as the jury
25 note is delivered to the Court by the Marshal, we turn our

JURY CHARGE

3848

1 attention to it immediately.

2 In the same way, if you have any questions about the
3 applicable law or you want a further explanation from me, send
4 me a note. We will provide a response as soon as we can.

5 I have provided the jury with a verdict sheet, which
6 is self-explanatory. Needless to say, however, if you have
7 any questions about the verdict sheet, do not hesitate to send
8 the Court a note asking for further instructions. With
9 respect to each count, you're to resolve individually the
10 issue of whether the Government has established beyond a
11 reasonable doubt the essential elements of the offense, as
12 I've described them to you. That is, you must all agree
13 unanimously as to whether your verdict is guilty or not
14 guilty.

15 When you have reached a decision, have the
16 Foreperson record the answers, sign the verdict form, and put
17 the date on it, and notify the Marshal by note that you have
18 reached a verdict. Bring the completed verdict sheet with you
19 when summoned by the Court.

20 You must not be influenced by sympathy, present, or
21 public opinion. I remind you at the outset that each of you
22 has undertaken a solemn obligation, a sworn obligation, to
23 decide this case solely on the evidence. You must carefully
24 and impartially consider the evidence, follow the law as I
25 state it, and reach a just verdict, regardless of the

JURY CHARGE

3849

1 consequences.

2 As you begin your deliberations, remember your oath
3 sums up your duty, and that is, without fear or favor to any
4 person or party, you will well and truly try the issues in
5 this case according to the evidence given to you in court and
6 the laws of the United States.

7 In a few minutes I am going to excuse our alternate
8 jurors. As I told you before, your services were required
9 as a safeguard against the possibility that one of the regular
10 jurors might be unable to complete his or her service. I
11 commend the alternate jurors for their faithful attendance and
12 attention on behalf of the Court and parties, I thank you for
13 your service.

14 Members of the jury, I ask your patience for a few
15 moments longer. It may be necessary for me to spend a few
16 moments with counsel and the reporter at the sidebar. If so,
17 I will ask you to remain patiently in the box without speaking
18 to each other and we will return in just a moment to submit
19 the case to you.

20 Thank you again for your time and attentiveness.

21 (Continued on the next page.)

22 (Sidebar conference.)

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SIDEBAR CONFERENCE

3850

1 THE COURT: Any objections or exceptions to the
2 charge as given?

3 MS. JONES: Not from the Government.

4 MR. ROSS: Judge, just objections that we previously
5 made and. We join in co-counsel's objections as well.

6 MR. RIOPELLE: I have no objections other than those
7 stated at the charge conference.

8 THE COURT: Thank you.

9 (End of sidebar conference.)

10 (Continued on the next page.)

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1 (In open court.)

2 The clerk will mark as Court Exhibit 2 the charge
3 that was just read to you, ladies and gentlemen of the jury.
4 That charge, the written charge, will accompany you into the
5 jury room. You'll have access to that throughout your
6 deliberations.

7 You will also receive a copy of the verdict sheet
8 that was referenced for you to complete as you complete your
9 deliberations.

10 Now, you were told in the charge that to the extent
11 that you have a failure of recollection about something, you
12 can send us a note and we'll try to find that testimony in the
13 record and read it back to you. In addition to that, I don't
14 have to tell you there were a lot of documents that were
15 received, papers that were received in evidence. Not all of
16 the papers that we saw during the trial were received in
17 evidence, but those that were received in evidence are
18 available to you in the jury room if you need them. Just send
19 us a note, try to describe what document it is that you need,
20 and we will endeavor to find it and send it in. It doesn't
21 mean you have to ask for read backs or documents, but if you
22 want them, they are there for us to provide them to you.

23 We'll work until probably 6:30, quarter to seven
24 today. To the extent there is no verdict, we will return, as
25 I indicated to you, tomorrow, and work a regular business day

PROCEEDINGS

3852

1 and go from there. There is no time pressure put on you. You
2 take as much time as you need to apply the law as I've given
3 it to you to the facts that you find them.

4 I'm going to ask all the jurors to retire after we
5 swear the Marshal. And then ask the three alternate jurors to
6 pick up any belongings that they may have and return to the
7 courtroom.

8 (Marshal sworn.)

9 THE WITNESS: Yes, I do.

10 THE COURT: Thank you, Marshal.

11 (Jury exits the courtroom.)

12 (Time 5:10 p.m.)

13 MR. RIOPELLE: Judge, I am wondering whether the
14 Court requires us to be in the courtroom during deliberations
15 or just give William our phone number?

16 THE COURT: As long as we can track you down.

17 MR. RIOPELLE: Somewhere in the courthouse, Judge.

18 THE COURT: If we have your cellphone, even if
19 you're in the park.

20 Counsel, we're going to discharge the alternates
21 from the courtroom.

22 (Alternates enter.)

23 Alternate jurors, thank you again. We thanked you
24 formally in the charge, and everything that we said there
25 certainly we will reenforce. We do very much appreciate your

1 service, your attentiveness, your patience. And if you
2 thought you were escaping, I got news for you, you're not.

3 I'm not going to keep you here, but the realities
4 are, and we know it from this very case, that because of
5 circumstances beyond the control of a juror, sometimes we need
6 alternates; in fact, that's exactly what happened in this
7 case. So no one can know as the deliberations wear on in this
8 case whether or not one of our deliberating jurors may not be
9 able to complete his or her service. So therefore, we have to
10 have the ability to vouch in and restart deliberations with
11 one of the alternates.

12 What does that mean practically to you. It means
13 you can return to work tomorrow, but you must be prepared to
14 return to the courthouse in case that circumstance eventuates.

15 That means all the instructions that you've been
16 receiving over the course of the trial continue to apply to
17 each of you. So you still have to keep an open mind, you're
18 not back there deliberating yet. You are not to not talk to
19 each other about the case or to anyone else about the case.
20 If you're on a social media platform or other means of
21 communication, you remain on radio silence. No references to
22 the fact that you had been a juror or you may have to come
23 back and be a juror, or anything that touches upon the case.

24 To the extent that there is any media coverage of
25 the case, you're directed to close your mind, eyes and ears to

1 it. I encourage you, again, to do the same with respect to
2 other matters for fear it may confuse you now with the
3 instructions that you just received.

4 Of course, to use the period of recess for you is
5 not an opportunity to do any kinds of research, electronic or
6 otherwise.

7 You heard me indicate to the jury that again, for
8 your planning purposes, that we do have a session tomorrow.
9 To the extent, however, that deliberations aren't completed by
10 tomorrow, we will not be in session again until Wednesday. So
11 in no circumstances will your services be needed Saturday,
12 Sunday, Monday or Tuesday.

13 So either we won't see you again, or we may see you
14 tomorrow, or we may see you on Wednesday but nothing in
15 between. William will stay in touch with you and advise you
16 if a verdict has been reached or if there has been any other
17 disposition of the matter. From that point on, all of the
18 rules that I've given to you no longer apply. But until you
19 get that call from William, they all still apply.

20 Also still applying is our gratitude for your
21 patience and cooperation your sacrifice and your
22 attentiveness. And we certainly appreciated having you part
23 of the trial. Have a pleasant evening, maybe we'll see you
24 again.

25 (Alternates exit.)

1 THE COURT: As long as William has your cellphones,
2 he will give you a ring. We'll bring the jury back in at a
3 certain point, 6:30, 6:45, whatever, and discharge them for
4 the night. Come back around 6:30, that probably makes sense.

5 (Recess.)

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PROCEEDINGS

3856

1 THE COURTROOM DEPUTY: All rise. Court is back in
2 session.

3 Counsel for both sides are present, including the
4 defendants.

5 THE COURT: We got a note from the jury, which is
6 marked as Court Exhibit Number 3.

7 (Court Exhibit 3, was received in evidence.)

8 THE COURTROOM DEPUTY: Dated 5/3/18. Can we please
9 get Count Five, Count Six, Count Seven, Count Eight, Count
10 Nine, and Count Ten, call transcripts, please. Signed by
11 William Williamson.

12 MS. JONES: Your Honor, the government's position is
13 that we should play the calls.

14 THE COURT: Yes, it's the Court's position. The
15 calls are in evidence, the transcripts are not.

16 MR. ROSS: Judge, may I just be heard briefly.

17 The jury did have the transcripts, they are a guide.
18 Your Honor can recharge the jury.

19 THE COURT: They wanted to hear wires, they will
20 hear them.

21 MR. ROSS: And we just think that it would be fairer
22 if they had the transcripts that they follow.

23 THE COURT: Yes.

24 MS. JONES: We're going to put them on the screen,
25 because we do not have paper binders for all the jurors right

1 now, but we can put them on the screen.

2 MR. ROSS: And we just prefer the paper that the
3 jury had during the playing of the exhibits.

4 THE COURT: Do you want us to wait, Mr. Ross, or do
5 you want us to use the things on the screen?

6 MR. ROSS: We think it's fairer. We ask -- I
7 understand it wouldn't take very long to get the actual
8 transcripts in the courtroom.

9 MS. JONES: Your Honor, that seems like a waste of
10 the juror's time.

11 THE COURT: Yes. They were there for an aid to the
12 jury. We'll get them the second best, which is on the screen,
13 that what's in evidence is what's in their ears. That's what
14 they're entitled to.

15 MR. ROSS: Understood.

16 (Pause.)

17 (Jury enters the courtroom.)

18 THE COURT: Be seated, please.

19 Counsel will stipulate that the jury is present and
20 properly seated.

21 MS. JONES: Yes, Your Honor.

22 MR. ROSS: Agreed, Judge.

23 THE COURT: Thank you, ladies and gentlemen. We
24 have gotten your note.

25 As you will recall, when you heard the tapes during

1 the trial itself, I indicated to you that what you were
2 hearing is in evidence, and what you were seeing was only an
3 aid. But when you ask for the those wire transcripts to be
4 provided to you, we will put the wire transcripts up on the
5 screen, but we have to play the tapes, because that is what is
6 in evidence, not the transcripts.

7 So who is playing that now? Is that you, Ms. Jones?

8 MS. JONES: Yes, Your Honor.

9 We're going to start with Count Five, which is
10 Government Exhibit 198-16, a May 9th, 2014 call. And it's an
11 excerpt that's has admitted into evidence from zero two
12 minutes 437.

13 (Audio recording played.)

14 MS. JONES: Next call is Count Six, which is
15 Government Exhibit 198-9, a May 9th, 2014 call from Discala to
16 Jamie Sloan for the BMAC stock.

17 (Audio recording played.)

18 MS. JONES: The next call for Government Exhibit --
19 for Count Seven, is Government Exhibit 198-74, a May 9th, 2014
20 telephone call from Discala to Victor Azrak discussing, among
21 other things, manipulation of Cubed and StarStream stock.

22 (Audio recording played.)

23 MS. JONES: Okay, for Count Eight, Government
24 Exhibit 198-52, a June 12th, 2014 call -- telephone call from
25 Discala to a trader at BMA, an individual whose identify is

1 know to the grand jury, discussing, among other things, the
2 manipulation of StarStream stock.

3 (Audio recording played.)

4 MS. JONES: Count Nine is Government Exhibit 198-77.
5 We have an excerpt, which is a June 12th, 2014 telephone call
6 from Discala to Josephberg, discussing, among things, the
7 manipulation of StarStream stock. We're going to play from
8 zero to one minute and three seconds, which is the excerpt in
9 evidence.

10 (Audio recording played.)

11 MS. JONES: Okay, and Count Ten is Government
12 Exhibit 198-53E. It's a June 12, 2014 telephone call from
13 Discala to Marc Wexler discussing, among things, the
14 manipulation of Cubed stock. There are two excerpts in
15 evidence. The first one goes from a second 23 to three
16 minutes and 52 seconds, and the second one is from a minute
17 812 to ten minutes and zero five seconds.

18 (Audio recording played.)

19 THE COURT: All right, ladies and gentlemen,
20 those --

21 MS. JONES: Your Honor, we have -- I'm sorry,
22 there's still an excerpt that hasn't been played yet.
23 Actually it's a very short one and then it would pick up
24 again.

25 We have two more excerpts to play. Eight minutes

PROCEEDINGS

3860

1 and 12, first excerpt.

2 (Audio recording played.)

3 MS. JONES: 827.

4 (Audio recording played.)

5 MS. JONES: That's the end of that call.

6 THE COURT: Now, thank you, Ms. Jones.

7 Ladies and gentlemen, that completes the excerpts we
8 think you wanted. If there's something else, please let us
9 know, otherwise we'll send you back to the jury room for
10 another 15 or 20 minutes to continue your deliberations and
11 we'll catch up with you after that.

12 (Jury exits the courtroom.)

13 THE COURT: See you in another 20, unless we get
14 another note.

15 (Whereupon, a recess was taken at 6:39 p.m.)

16 THE COURTROOM DEPUTY: All rise. Court is back in
17 session.

18 Counsel for both sides are present, including
19 defendants.

20 THE COURT: We received a note from the jury which
21 is marked as Court's Exhibit Number 4, which the clerk will
22 read.

23 (Court Exhibit 4, was received in evidence.)

24 THE COURTROOM DEPUTY: Your Honor, we're at a good
25 stopping break. Is it okay if he we return at 9:45 a.m.

1 tomorrow. Signed by William Williamson.

2 THE COURT: Sounds like a plan.

3 Fetch the jury.

4 (Jury enters the courtroom.)

5 THE COURT: Be seated, please.

6 Counsel will stipulate the jury is present and
7 properly seated.

8 MS. JONES: Yes, Your Honor.

9 MR. ROSS: Agreed, Judge.

10 THE COURT: Thank you, counsel.

11 Ladies and gentlemen, we have gotten your note and
12 it certainly is a wonderful time to break, and we shall do
13 that. We concur in your suggestion that you return at
14 9:45 tomorrow morning.

15 Report to the central jury room. When all 12 of you
16 are here, the marshal or William will bring you up and you can
17 return to the jury room and you can go directly back to your
18 deliberations and we'll look forward to hearing from you
19 thereafter.

20 Our plan will be, again, there's certainly no time
21 limit on what you have to do. What you have to do is very
22 important. There is no time limit. We will work a regular
23 day.

24 To the extent you still haven't completed your
25 deliberations, for your planning purposes, we will not be in

1 session on Monday and Tuesday, but we would return on
2 Wednesday, in case you have to advise any employers of what
3 planning is.

4 So, again, we appreciate your attention, your
5 patience, your sacrifice. And you are not discuss the case
6 amongst yourselves, because as you heard in my instructions,
7 even though you're a deliberating jury, the only place you can
8 discuss the case is when all 12 of you are in the jury room
9 and under the custody of the marshals. Even though you're
10 deliberating now, you're not to discuss the case with your
11 fellow jurors or with anyone else.

12 Again, to the extent there are any media accounts of
13 this case, you're directed to disregard them. I urge you to
14 disregard the accounts of any courts proceedings via possible
15 confusion about what your responsibilities are here.

16 You are not to do any legal research about anything
17 that touches on the case, any of the personalities, the laws,
18 the issues.

19 And, again, if you on social media or any other form
20 of communication, you are on radio silence. Don't mention the
21 fact that you are juror or you come to the courthouse or
22 anything that remotely touches upon the case.

23 Again we appreciate your service and we look forward
24 to seeing you tomorrow. Have a pleasant evening.

25 (Jury exits the courtroom.)

1 THE COURT: Okay, our plan, for counsel and the
 2 whole bunch of you, I have a relatively full calendar
 3 tomorrow. Sadly, Judge Townes' courtroom is available, so if
 4 we can work it out, what I will try to do is call my regular
 5 calendar in Judge Townes' courtroom, this way all of you can
 6 continue to do whatever it is that you have to do without
 7 being disturbed in this courtroom.

8 (Discussion was had off the record.)

9 THE COURT: We're not sure, but we're trying to do
 10 that between now and tomorrow morning.

11 Other than that, we will see you in the morning.

12

13 * * * * *

14 (Proceedings adjourned at 7:10 p.m. to resume on
 15 May 4, 2018 at 9:45 a.m.)

16

17 I N D E X

18 SUMMATION BY MR. RIOPELLE 3662

19 REBUTTAL SUMMATION BY MS. JONES 3729

20 JURY CHARGE 3771

21 E X H I B I T S

22 COURT PAGE
 23 3 3856
 24 4 3860

25